



# ***Pacific Women's Watch New Zealand***

*Report and Proceedings of 14th Annual Conference*

## ***“Towards Democratic Renewal”***

*A discussion with Sir Geoffrey Palmer and Andrew Butler exploring  
a written Constitution for Aotearoa/New Zealand*



Saturday, 16th November 2019  
Somervell Presbyterian Church, Auckland



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## Conference Participants:

Sir Geoffrey Palmer ex-Prime Minister and Minister of Justice  
 Andrew Butler academic

Dr Huhana Hickey lawyer academic Pukenga Consultancy  
 Gabriella Brayne second year law student

Damon Salesa professor of Pacific Studies at Auckland University, Pro Vice Chancellor Pacific Rhodes Scholar  
 Meng Foon Race Relations Commissioner and former mayor of Gisborne

## Introduction: Pacific Women's Watch (New Zealand)

### Working for Gender Justice

Pacific Women's Watch (New Zealand) Inc is an organisation which has had special consultative status with the United Nations Economic and Social Council (UN ECOSOC) since 2010.

Pacific Women's Watch New Zealand links with Asia Pacific Women's Watch (APWW), a regional network of women's groups which has five sub-regions (Central Asia, East Asia, South Asia, South-East Asia and the Pacific). At global meetings, eg annual UN Commission on the Status of Women meetings in New York, APWW speaks strongly for all its member 'Watch' groups. It is also joined by representatives from three major international women's networks: Isis International (feminist advocacy), APWLD (Asia Pacific Forum on Women, Law and Development), and ARROW (Asian-Pacific Resource and Research Centre for Women).

Asia Pacific Women's Watch (APWW) was established after the UN 4th World Conference on Women, held in Beijing 1995. It collaborates with United Nations agencies, national governments and non-government organisations in empowering women and advancing their human rights. APWW works to recognise the universality of human rights as women's rights, forge new thresholds of gender equality, celebrate diversity and build peace through justice.

Pacific Women's Watch New Zealand holds open meetings and annual conferences which complement its aims to:

- ☐ Monitor the implementation of CEDAW, the Beijing Platform for Action, UN General Assembly outcomes documents, and other programmes for action in New Zealand.
- ☐ Enhance women's leadership and promote gender equality in all decision-making processes.
- ☐ Act as an agent of change by monitoring, reviewing and reporting, within New Zealand and to the UN, on the elimination of all forms of discrimination and violence against women eg CEDAW.
- ☐ Pursue and uphold gender justice.
- ☐ Encourage sustainable rights-based economic development.
- ☐ Share information on good practice and lessons learned in advancing the status of women through effective communication.

All of these activities relate to effectively protecting every citizen's access to protection of their human rights. It seems that the most privileged citizens gain access to protection of their human rights first. Marginalised groups are left struggling to gain equal protection for their human rights, even many decades after the Bill of Rights and Human Rights Acts were first passed by Parliament. These issues are strongly influenced by our Constitution. That is why the 2019 Symposium has focussed on our Constitution.

PWW(NZ) facilitated nationwide workshops for Beijing+10, Beijing+15, Beijing+20 Reviews via national longitudinal studies and focused workshops.

PWW(NZ) members have participated within New Zealand and overseas in:

- ☐ Pacific Trafficking in Persons Conferences, 2009, 2011, 2013
- ☐ New Zealand Ministry for Women Caucus on International Issues – bi-annual meetings
- ☐ Pacific sub-regional Beijing + 10 Workshop, Sydney
- ☐ Asia-Pacific NGO Beijing+10 Forum, Bangkok; Beijing+15 Forum, Quezon City and Asia Pacific Beijing+20 Civil Society Forum, Bangkok
- ☐ Global Forum for Women: Beijing+15, 2010 and the United Nations Commission on Status of Women, 2010, 2011, 2012, 2013, 2014, 2015, 2016 at UN, New York

## **Key Objectives of PWW(NZ) include:**

- ☐ Ensure women's voices from the Pacific sub-region, especially New Zealand, are heard internationally
- ☐ Be a communication link between New Zealand and other non-governmental women sub-regionally and internationally
- ☐ Share strategies to measure and assess changes in women's status
- ☐ Recognise views and expectations of Tangata Whenua – thus upholding the obligation to honour the Treaty of Waitangi

## **Core Activities:**

Pacific Women's Watch New Zealand writes substantial well-researched reports pertaining to the status of human rights of women and girls in Aotearoa New Zealand and submits them to relevant UN Committees, viz: PWW(NZ) NGO Alternative Reports to CEDAW, December 2006; September 2011; *Status of Women* Addendums July 2007, June 2012, December 2014; also Universal Periodic Review NGO Alternative Reports to UN OHCHR, 2013. This work is aligned to New Zealand's reporting obligations as a signatory to core UN international instruments on human rights.

In its Concluding Observations to the New Zealand government in 2012, UN CEDAW (Committee) noted that UN CEDAW (Convention) needed to be much more widely known in all parts of the country, among all segments of society including in schools and tertiary education institutions and among all segments of society including government officers, legislators, judges, lawyers, magistrates, prosecutors, the police, and other law enforcement officers for equality and the advancement of women. In response to this message, PWW(NZ) designed and printed an educational leaflet: 'CEDAW, Bill of Rights for women and girls in New Zealand' for wide distribution in the community which was launched by Policy Director, Ministry of Women's Affairs at PWW(NZ) Conference, 2013.

Pacific Women's Watch New Zealand publications are available on the website: [www.pacificwomenswatch.org.nz](http://www.pacificwomenswatch.org.nz) – look under 'Reports'.

## **About us:**

PWW(NZ) is proud to report that not only do its Board member range in age from recent graduates in their twenties to veteran advocates from national NGOs who participated in UN 4th World Conference on Women, Beijing, 1995; but they also identify as members of eight ethnicities including Tangata Whenua.

Our co-Patrons are: Dr Marilyn Waring CNZM, Ph.D. and Prue Kapua, President, Maori Women's Welfare League, Te Rōpū Wahine Māori Toko i te Ora.

Pacific Women's Watch New Zealand membership is open to individual women, women's groups and organisations - without barriers. All are welcome.

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## Contents

Conference Participants:.....	2
Introduction: Pacific Women’s Watch (New Zealand).....	3
Contents.....	5
Welcome .....	7
Sir Geoffrey Palmer .....	9
Andrew Butler .....	17
Speaker's Discussion .....	20
Tim Watkin: .....	20
Sir Geoffrey Palmer .....	21
Tim Watkin.....	21
Sir Geoffrey Palmer .....	21
Tim Watkin.....	21
Andrew Butler .....	21
Tim Watkin.....	21
Sir Geoffrey Palmer .....	22
Tim Watkin.....	22
Sir Geoffrey Palmer .....	22
Panel Discussion.....	23
Towards Democratic Renewal: Ideas for constitutional change in New Zealand .....	45
A Constitution for Aotearoa New Zealand .....	47
For a better democracy.....	48
Chapter 1: Constitution Aotearoa – the essential message .....	48
The proposed Constitution of Aotearoa New Zealand .....	62

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**Disclaimer:** While every attempt has been made to accurately represent the opinions expressed by the women who attended the workshops this report does not claim to cover every individual's contribution.

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# Conference Programme: Towards Democratic Renewal



## **Saturday 16<sup>th</sup> November 2019** **Somervell Presbyterian Church, Auckland**

9.00am Registration

9.30 – 9.45am Karakia & Welcome (Fala Haulangi VP PWW-NZ),

9.10 – 9.30am Introduce Speakers Tim Watkin

9.45 – 10.25am Sir Geoffrey Palmer

10.25 - 10.55am Andrew Butler

11.00 – 12.00pm Panel Q & A discussion

12.15 – 1.30pm Lunch and Refreshment break

1.30 – 2.00pm Summarise and close



## Welcome



### Fala

... [unclear]... For His love and care upon each and every one of us here – that is why we are able to be here today. And not only that, I also want to acknowledge that He is looking after us and our whānau and all the different work, mahi, that we are doing out in the community to make a difference to the lives of workers, their whānau and communities. So today – looking forward to the korero. We have Sir Geoffrey Palmer today and our other guests as well but that's all I have to say but welcome! And I'll hand you over to Christine King today. Thanks you.



### Christine King

I'd like to add my welcome to Fala's welcome to you all. Lovely to see you. We've got a fairly full programme today and it's really lovely to have everybody here. We've got some really interesting people. Obviously. We've got Sir Geoffrey Palmer going to lead us and I think pretty well all of us here would remember him and the work that he's done. And his assistant there Andrew Butler [chuckles]. Dr Andrew Butler. I don't think he's quite an assistant. And our moderator today is Tw. I don't know whether you listen to Radio New Zealand. If you do, you will have heard Tim on the radio. He's also in the past produced some of the TV shows like Q and A I think it was, wasn't it Tim? Yes. So he's going to take over and lead us through the rest of the morning.

[Applause]





Tim Watkin

Thanks Christine. Good morning everybody. Haere mai, Talofa, welcome to Somervell Presbyterian and thanks for coming here on a Saturday morning. It's always an effort to get out of the house on the weekend so I appreciate your time here today.

Ko Tw taku ingoa

Ko Ruahine te maunga

Ko Manawatu te awa

Ko Ngati Montgomeryshire and Cornwall amongst other places.

By way of further introduction. Yes, I'm a journalist, have been for about thirty years. I also have written about constitutional issues a bit over the years including a term at Cambridge University studying New Zealand's constitution which is why I have been asked to help out this morning.

I last saw Sir Geoffrey a couple of years ago when we made the 9<sup>th</sup> Floor series which became a documentary and podcast and book about what it's like to run the country so hopefully that'll help you. I'll be here to help facilitate the discussion today and I'm also an elder here at Somervell so you're doubly welcome. Thanks for coming.

We're here today to talk about constitutions, which underpins our democracy, our government, and our public life here in New Zealand, but to paraphrase Sir Robert Muldoon who had a fair bit of power thanks to our constitutional arrangements: most New Zealanders wouldn't probably know a constitution if they tripped over it in the dark. [Laughter] And if you're one of those then this is your lucky day because the people speaking to you are the best in the business. So first I just want to get straight into it and welcome Sir Geoffrey Palmer: of course a former Prime Minister, deputy Prime Minister, Attorney General, key figure behind the New Zealand Constitution Act



1986, the New Zealand Bill of Rights, 1990, and almost certainly probably the person living who's had the most influence on New Zealand's Constitution. So please Sir Geoffrey Palmer.

[Applause]



### Sir Geoffrey Palmer

Kia Ora, Kia Orana, Talofa Lava, Malo e Leilei, forgive my poor pacific greetings but I'm a South Islander.

It's really good to be here in Auckland and to be able to discuss this subject with people who want to discuss it. Because as Tim mentioned, the biggest obstacle to constitutional change in New Zealand is the fact that people do not know what the New Zealand Constitution is. And that's what I hope in these remarks to be able to do – is to set out what this issue is about. The word constitution itself is a mouthful. But every organisation in our country, any company, any charitable organisation, any incorporated society, has a set of rules that they have to follow. That's order. The New Zealand government is not inhibited in that way. So what I really want to do is to say that Andrew Butler and I have over the last few years been engaged in an exercise to try and bring together the elements of the New Zealand constitution and set them out. Now, we have published two books in recent years, one of them 'A Constitution for Aotearoa New Zealand' was published in 2016 and then 'Towards Democratic Renewal' published in 2018. Subtitled 'Ideas for Constitutional Change in New Zealand. This second book builds upon the first. And it says on the front what it was trying to do. We propose a written, codified constitution for New Zealand. That constitution aims to set out in an accessible form and in a single document the fundamental rules and principles under which New Zealand is to be governed. It defines the powers of the basic institutions of government and the rights of individuals. It deals not with constituent elements of the constitution in isolation but sets out the constitutional world as a coherent whole. It identifies the bedrock principles by which public power is to be exercised in New Zealand.

Now that is the aim and it remains the aim but after we published the first book, we engaged in an extensive nationwide road trip to speak to various audiences just like this. We set up a website, we took submissions. What the public told us was indeed interesting. We met more than three and a half thousand people face to face at public meetings across New Zealand in quite remote parts. One of the biggest was in Takaka. Now all of those meetings involved question and answer sessions, we were active on social media including Facebook and Twitter. I must confess that Andrew and I are not masters of these things, our research assistant was the person who did

that. We generated as much publicity as we could in the newspapers which thankfully still exist to an extent and the online media. By December 2017 we had received approximately four hundred and forty submissions. There was strong support from the submitters with a clear majority favouring the aims of the project. And it did generate a lot of public interest. But let me just outline now what the obstacles to progress are in an exercise of this sort:

For most New Zealanders the issues involved with constitutional reform are too abstract. They seem too remote to generate enthusiasm. That has long been the case in New Zealand. But the difficulty is this: that the gateway to constitutional reform are the political parties. They are not enthusiastic about this. We've really failed to generate any significant support among the political parties except for the Greens. The main constitutional change that is being dealt with currently in the system is a relatively minor one. That is an issue as to whether the New Zealand Bill of Rights Act 1990 should be altered to allow the senior courts to actually pursue declarations of inconsistency under the New Zealand Bill of Rights Act. Now while that is a welcome move, it can be hardly regarded as a big change, and it arose out of the Taylor case about which my colleague Andrew Butler who was involved in that case will have a bit more to say. But in that case – this was Arthur Taylor who said that the New Zealand law about depriving people in jail in all circumstances of their vote was wrong. And the court agreed with him. I just want to summarise to you the Crown's argument in that case. They said there was no power for the courts to issue such a declaration, it was incompatible with New Zealand's constitutional arrangements the Crown said. That it wasn't, that the judicial branch only had judicial powers. The grant of a remedial declaration of inconsistency is not an exercise of judicial power because it involves no justiciable legal controversy between the parties the Crown said. And no enactment or rule of law confers any express or implied statutory power on the High Court to grant a declaration even though the court had, and had suggested in earlier cases that it could. And nor does the enactment of the Bill of Rights legitimate the judicial assertion by the High Court of new inherent powers. Now I must say that I regarded that as a disgraceful argument for the Crown to make when the New Zealand Bill of Rights Act was part of New Zealand law. And we are a society that respects the rule of law and we expect the government to be under the rule of law, not over it. And to say somehow because Parliament can do anything it likes it should be able to take away rights under the Bill of Rights is not, it seems to me, a satisfactory situation.

No you will know that the New Zealand Bill of Rights Act when it was first conceived was supposed to be an entrenched law in which the courts would have a power to strike down the law only if that law was incompatible with the Bill of Rights. Now there was no appetite in the Parliament then to do that and the result of that was that we had to compromise and do a Bill of Rights that preserved parliamentary sovereignty but that seems to me, you have to think in the challenges that democracy faces now, that minorities are going to be subject to majority tyranny when their rights are taken away because it's popular to do so.

The Parliament can override the Bill of Rights and it does so. It's done so on nearly forty occasions in the history of the Bill of Rights and the government we think should be in the same position the monarch is: under the law not over it, and our constitution that we drafted accomplishes this and gives real teeth to the observance of fundamental human rights.

Now of course there are quite a few reasons why elected politicians and political parties are leery of constitutional change. Perhaps the most obvious reason is that people who are elected tend to believe they should be able to legislate freely without restraint. We see plenty of examples of that in front of the Parliament right now. There is a piece of legislation which has attracted a lot of resistance this very week, even from the New Zealand Law Society committee which I am on in relation to this - where they want to be able to make orders against people who have returned

from where they have been engaged in terrorist operations. Now that's a complicated matter but I just wanted to say that the powers that are taken by that Bill are all totally disproportionate to the threats that the conduct to deal with proposes.

Now so you've got political resistance from parties who've got the desire to get into Parliament and become the government and then do their programme and that's fine but it ought not to inhibit the observance by the New Zealand government, by the New Zealand Parliament of the protections of human rights that are so fundamental and that were really debated after the second world war so that there was no recurrence of the behaviour that led to that.

Now of course, one of the other things that you find out about New Zealand if you're a constitutional lawyer: you turn into a bit of a constitutional tragic if you're in New Zealand because no one has the slightest idea what you're talking about. And the real problem with that is that it's not taught in the schools. Civics is not taught. My mother was taught Civics in the early 1900s in Christchurch but it wasn't in the curriculum for years. They are now starting to bring it back. Chris Hipkins has got a programme to bring it back but I think it's a mark of citizenship that you have to understand the rules under which you are governed. In a democracy those rules are there to serve you. Now the problem is that in New Zealand, I remember when I started teaching constitutional law in Victoria University I started with the Standing Orders of the House. How many people here have read the Standing Orders? Well I'm pleased that that's so! [Laughter] Well I tell you the students found it a bit boring. But why did they find it boring? Because the first thing they had to look at was the twelve surviving provisions of the 1852 Constitution Act and they couldn't understand how the Imperial Parliament at Westminster had passed a Constitution Act of great length and complexity and there were only twelve provisions left and that's all we had for a Constitution Act. So one of the great things that Robert Muldoon's constitutional crisis of 1984 achieved was an excuse to have a Constitution Act in fact which we've now got and do you know that Constitution Act set out very conservatively the main elements of the judiciary and the executive at the Parliament and the monarchy and it was so uncontroversial it attracted eight submissions at the Select Committee!

Now that is an indication of the constitutional kind of lack of concern that New Zealanders have. They are under a constitutional set of arrangements, an unwritten constitution, but they don't know it. Now the other thing is that people have a lot of trouble joining the dots. How do the constitutional arrangements affect the policy outcomes that everyone is very interested in? Abuse of public power affects everyone in this country and the New Zealand government is invested with enormous quantities of public power and the number of checks and balances upon it are few compared with most democratic countries because we say "We know we're a lovely little democracy – everything will be fine here". So it's very hard to generate a bow wave of support for change and I do appreciate that and I understand it. But you look at the current New Zealand Constitution and what do you see? You see a hotchpotch of rules, some legally binding, some not, formed by a jumble of statutes, some New Zealand statutes, even some very old English Imperial statutes like the Bill of Rights 1688 which the British have forgotten about and got into trouble in the Miller case.

Now important things are done under obscure constitutional conventions. These are customs – customs of the constitution. Now I've never been in a discussion in a cabinet or a caucus that discussed what the constitutional conventions were, but the constitutional lawyers think they know them. The difficulty about constitutional conventions is that they come and go as many customs do. The result of that is that you can't be sure what at any given time will happen. When a new constitutional convention was invented in 1984 never seen in New Zealand before about devaluation. Sir Robert Muldoon wouldn't devalue, there was a crisis, they wouldn't open the

exchange. Jim McClay invented a constitution, sold it to his colleagues, and Muldoon was forced to implement the incoming government's policy on devaluation but that was based on an Australian constitutional convention that we'd never heard of. Really good, but do you really want to have that sort of thing a right?

Now there has never been a thorough public discussion, properly led, adequately financed by the government as to what New Zealand's constitutional arrangements ought to be. We still live in the shadow of the constitutional arrangements bequeathed to us by the United Kingdom in 1852. Quite a lot of people think that's fine, even a virtue. But think on this: only the United Kingdom and Israel have constitutions similar to ours and few I think are to be found at the moment that would say that the United Kingdom constitution is functioning well. And there are increasing calls for a written constitution there, yet our constitution remains remarkably similar to theirs. They had a big fuss about prorogation of parliament. Prorogation is part of our system, although we've tamed it a bit more than they have.

So just think about the challenges ahead. What are the global trends for democratic government on this planet? And what are the challenges to democracy? Now I don't want to be unreasonable here but I do think that the world's two leading democracies in historical terms are probably the United Kingdom and the United States. Both of them are faltering. New Zealand is one of the world's oldest democracies in a sense because we've been self-governing since 1857 but we did that under the sort of cocoon really of imperial power from Britain which ran our defence policy and our foreign affairs. So we have had many advantages: we've got a long democratic tradition, and democracy really is best understood as a form of self-government. It's not supposed to be fed-exed from on high, it's supposed to bubble up from the people who take a concern in the way they are governed and want to have a say in it. Now, the thing about democracy is that it's hard to get and easy to lose. We have a government that is under the rule of law. And that's a useful protection. We have a government that rules over a country that is not in a state of chaos or civil war and neither is it a failed nation as more than a score of other nations are. There's an absence of polarisation here so far. There's an absence of corruption. We have a relatively open government although the Official Information Act urgently needs attention and that is never a matter that Ministers are very happy about. We are free from gerrymandering. Perhaps the most important rule of all that's contained in the Electoral Act, the way that the boundaries are set for seats, prevents the gerrymandering that goes on in the United States.

But I suggest to you there are some storm clouds appearing. I think that western civilisation is witnessing its democratic values eroding. It's perhaps transitioning to some new form of government that tends to be rather unpleasant. Both the United Kingdom and the United States have considerable polarisation and they have substantial political turmoil. I always think the wonderful thing about the old New Zealand law about this it used to say in it: "that the purpose of the government is to provide for the peace, order and good government of New Zealand," that's an admirable aim! But there are many western countries in which there's an increasing lack of trust in the political classes and the political processes over which they preside and the litany of unhappinesses is quite long I think.

Perhaps the biggest problem lies in the great disparities of income that have occurred in western countries in the last thirty years. Then there's the media which has traditionally acted as a vehicle of communication between governors and the governed and it's tending to break down. The business models of the media have been destroyed by the new technologies and to some degree that has been replaced by a social media that is, I suggest to you, somewhat toxic. And tends to be an enemy of representative democracy and not its friend. The example I cite is Cambridge Analytica – the roles played in both the election of Donald Trump and the Brexit referendum in the



United Kingdom. I notice recently that Facebook just paid a big fine about leaking data in that respect but do you think that's going to stop it? What deterrent effect is there? There's not enough international regulation of those great behemoth that run the social media platforms. So you can argue quite strongly I think that we're heading to an era of populism [sic] with authoritarian leaders and those threats to democracy are emerging at a time of enormous future challenges to public policy. Now so far in New Zealand we are free of those trends mercifully but we need to take steps to ensure that doesn't change. In some respects the project that Andrew and I are running is quite conservative. We want to bed in guarantees that democratic government will continue and cannot be taken away. And those future policy threats are substantial. Government these days is infinitely complex. The threats that any government faces now on this planet are profound. Take climate change. I taught climate change for three years because I'd been the Minister for the Environment years ago and got very interested in it and I do a big international environmental law book in the United States which a new edition has just come out of. We are going to have terrible disruption with sea level rises and increasingly extreme weather events. And you can see that right now. While the public has a much better understanding of the issues now than was the case a few years ago in relation to climate change, the problems have been evident since 1990 when the first intergovernmental panel on climate change reported and every subsequent report has said that the situation is worse than the one before. Now I just want to say as gently as I can to you that the enormous economic and social consequences of this and the transitional changes that are going to be required will place a lot of strain on our system of government. But that's not the end of the environmental problems at all. Species extinction and environmental degradation has gone on at a pace and look at the water degradation that we've had in New Zealand. But there's also a lot of geopolitical instability in this world and climate change is going to add to that. Where are a hundred million Bangladeshis going to live if there's a three or four foot increase in the sea level rise there? There's been a lot of revival recently in great power rivalry and there doesn't seem to be much leadership available to provide global solutions to global problems any more. We used to make treaties, important things: drift net fishing in the South Pacific, anti-nuclear policies, treaties, treaties... No one negotiates treaties any more, too hard, you can't get people to agree. You can't get people to sign up. They more interested in having big power rivalry than solving the problem. So I think global cooperation is reducing, not growing, and government in the years ahead is not going to be easy. There will be enormous challenges that will be difficult and they will shake the political system to its foundations. And what will be needed in the difficult times ahead is a firm commitment to the principles of democracy so it doesn't fade away in the exigencies of the minute.

A constitution if you have one can act as a brake on the slippery slide to polarisation and dictatorship. Now it can't stop it but it could put the brakes on. A constitution is something of a guard rail. And at present our constitutional arrangements are something like riding a bike with no hands - you can fall off pretty easily. And what worries me as a person who's spent much of his life working in and around with the New Zealand constitution is this conviction: democracy is a pretty fragile flower. The petals can fall off quickly.

So you say: "What is to be done about this?" Well Andrew and I are contemplating setting up an organisation to promote the idea of a written constitution in New Zealand to anchor our democracy but it will not happen without a bow wave of public support and it's very hard to generate that. Now I have to tell you I'm seventy seven and I'm not sure I've got the energy to stump the country endlessly talking about this. You can always convince people at a public meeting about this but most of the people don't have the energy to come to public meetings, they have to get their living, they have to look after their children it's hard enough to do that without concentrating on obscure recondite matters like constitutions. So how do we advance this public constitutional reform

agenda? That's the question I want this audience to discuss and provide us with guidance on because if you're going to change you have to have a strategy. Should we engage in a big political lobbying campaign and if you're going to do that where do you get the money? We are undecided at present on how to go forward and any constitution has to live in the hearts and minds of the people. It would be great of course if we had Civics properly taught and as I said before there are some signs that's starting to happen, but you know the biggest education you can have for a constitution is to have a constitution that you can read that's simply drafted and we drafted ours in English and te reo as well and that you could teach it to a student in elementary school and in secondary school. These things shouldn't be just the concerns of constitutional lawyers who teach in universities, who people can't understand. It has to be something that people believe in their heads that it's for them. Now, we have got in the second book, a vast number of changes that we're promoting as well. Now we might not be right about all of them but you can't start off the discussion if you're going to have a minimalist approach to it because you'll never go anywhere and what we've done is make a lot of suggestions for change as well as writing it all down and those suggestions I will go through because while a written constitution is essential, we don't think it's a sufficient cure against the ills that will face us. There are a lot of other changes needed. Take elections. Everyone thinks that democracy means elections and that's all it means. Elections are very important but what happens in between elections is very important as well and people tend to sort of wake up for three or four weeks of election campaign and then go to sleep again until the next one. [Laughter] That's not the way a democracy should work. The other thing is we have elections too often. We have argued and I have argued for many years that we need to have a four year term and I'll tell you why: a new government comes in they've got to understand what they're doing. It takes quite a while. It's a difficult thing to be a minister you have to learn things. And you have to be able to read things and you have to think about policy and you have to have discussions and consultations about your proposals so pretty well the first year of a new government you're beginning to figure out what you are and who you are and if you've got three parts of the government that's never going to be easy. Then you have to do something and get it enacted. They call that in parliament 'runs on the board'. Here's our programme now we ticked this off and we ticked that off. You can't do it in three years. You cannot get it, it's more complicated than that.

Government isn't just a matter of talking - it's a matter of enacting laws. It's a matter of settling the economy. It's a matter of taxing people. It's a matter of deciding how to spend the money. This is an exceedingly difficult, complicated set of arrangements. You're not going to get outcomes in three years. You won't get them all in four, but four would be better. But the New Zealand public will never allow you to have a four year term until there are more checks and balances in the system because they are not at all happy with what can be done to them by government.

So I think that we have now something approaching a continuous election campaign. We're not even in election year and you can see it all. There's all the posturing all over the place by everyone. You know, a continuous election campaign is not going to produce good policy well thought through, rigorously drafted and effectively communicated. We need less politics in New Zealand and more good government.

There are some pretty big deficiencies as well in New Zealand's electoral law. One of them is not enough people vote. The numbers are going down. And the very essence of a democratic election is that if you've got a lot of people voting that will represent something strong about what their view is.

We say you should have compulsory voting the way the Australians have. They get turnouts of well over 90%. We also propose that voting be reduced to the age of sixteen. And the reason for

that is you can see that the young have an enormous interest in the sins of their predeceasing generations. [Laughter] They know that climate change has been created by us. And they know that we're not doing enough to stop it because we're going to be dead and we don't care. That is disgraceful and you really have to think about the interests of future generations when you're making government decisions. But government decisions are built on one thing and one thing alone: the realpolitik of government decision is the next election is all that matters. And we don't want to look at the long term. And the New Zealand Government system is very bad at looking at the long term and yet the long term will make monkeys of us all if we're not very careful.

So the other thing is that a great deal of finance is raised by political parties and spent by them. There need to be better controls over election financing and a whole reconsideration on the dependence of political parties on their donors. It is naive to think that donations do not influence political parties. The political parties themselves have many fewer members than they used to fifty years ago. They are somewhat hollow shells, almost cadre parties, yet they exert enormous influence over the composition of parliament and they are hardly regulated at all. Yet they have enormous influence. And who do they really represent? So I'm not happy about that situation having inhabited the Parliament and a political party and having observed it first-hand what can go on. Elections and money are a real problem and that problem needs to be addressed.

But what is more important even is the need for increased and superior citizen engagement with the political process that produces the policy outcomes. Somehow we seem to have lost our way on this. Our current way of doing political business has in many ways gradually become more remote from the people whom it affects. The people tend to be consumers of the outcomes rather than participants in the process. Now that's happened partly because of MMP. The discussions between the three political parties that make up the government currently are so complex and so intricate and so important and behind closed doors that people are exhausted by the time they are finished so they forget about the public to a degree I think.

Now what Butler and I have advanced in the second case to change the way the policy-making system works because it's a bit tired - it hasn't changed for years. A Bill is introduced. It's often hard to alter a Bill after it's been introduced. You can amend it a bit but you can't really do much more. And the problem is that once it's introduced it's pretty much set in stone and the Select Committee submissions aren't going to alter it very much. But actually if you actually did it in a different way. If you had public support for the ideas because there'd been a profound public discussion about it then you would have more durable outcomes. It's no use changing everything when the government changes you know. The institutions of government are eternal. You're always going to have government departments, you're always going to have the courts, you're always going to have an executive and a cabinet. The question is how they interrelate with each other. Now Ireland: Butler's native flag. He came here as a young man, joined the faculty at Victoria University. I had a lot to do with him – [unclear] - he'd been at the University of Toronto and done very well. He had an Irish Law degree, he had the charm of the Irish, you know, and he's done very well in New Zealand, but his native land of Ireland is actually a place that has got a written constitution with judicial review because they had to when they became independent do something about their situation and they went and did it properly. We just sort of kept the British model, lopped bits off it, changed bits here and there but we never did a thorough job the way they did. And the other thing about Ireland is that they have these Citizens' Assemblies where they put a lot of resource and a lot of expertise and a lot of ordinary citizens chosen randomly to discuss how things should be done to reach conclusions and they have done things that you could never expect could be done because of that. And Andrew will talk to you a little bit about that.

You don't want to have everything settled by discussions behind closed doors in Wellington when you're developing big policies. We also think that New Zealand should become a republic because the difficulty with the current arrangements is that it's very difficult to justify. My

grandchildren don't understand why the New Zealand head of state lives in England. I mean it's a pretty difficult thing to conceive of. I remember going to Korea once and the Governor General was going and they didn't quite know who the Governor General was because it wasn't the monarch - but what was it? You know, I mean, these ancient imperial ideas are not well understood in other countries. So the difficulties that the UK have had in recent times with the Royal Prerogative where they've had massive litigation and political uproar about it might indicate that it was a good idea to get rid of the Royal Prerogative. Who understands it? I bet you in an examination conducted of you here today on the limits of the Royal Prerogative in New Zealand would not yield a correct answer.

Now another thing that I want to deal with is this: the Treaty of Waitangi. Hangs over New Zealand's constitutional arrangements like a brooding omnipresence in the sky. Its very untidy condition. It's a short document not well understood. It's heavily contested in some sections of the community but actually the Treaty is at the foundation of the legitimacy of government in New Zealand at all and it would be a good idea I think to start your Citizens' Assemblies with trying to sort out what the Treaty should mean in the circumstances of contemporary New Zealand and write that into the constitution. That I think would be would tidy up a lot of misunderstandings and would bring us together. Now it's a very complicated topic that, and there's a long chapter in our book about it.

But let me just say a word about local government - I mean I come to Auckland and you've got. Well I won't say what I think about Auckland, but what I think about it is that you have a massive local government system here and a massive number of problems. Now local government needs to be shaken up. It needs to flourish. It needs to have access to better funding and more independence from central government. It's really handicapped because it has rates and that's about all it can have and that is not a very good method of financing important activity. We have got in New Zealand one of the strongest unitary states in the world and I think further efforts need to be made to make government more transparent and open both at the local government level and the central government level. The Official Information Act, I meant the Ombudsman this very week reported that they were doctoring the information in Christchurch that they were releasing so that the bureaucrats were protected. How open is that? So I think sunlight is the best disinfectant and the most important element about that is it will protect you against corruption and corruption once it starts we know leads to failed nations. Now this is a pretty big agenda. It is. We may not be right about everything, but let's have a conversation that is properly run, properly financed and properly organised so that we can figure out from the bottom up what we should do and how we should do it. And that is our programme and I now want Andrew to speak who will tell you wonderful things.





## Andrew Butler

Kia ora tātou, talofa lava, kia orana, [unclear]

It's my misfortune to have to follow Geoffrey pretty much on every one of these occasions because it's hard even at the age of seventy seven. I only came here in 1991 but I cannot imagine what he must have been like at thirty seven with the energy he still shows for these issues that we are discussing today.

I'm not going to detain you for terribly long because for us one of the most important things about this project is putting ideas out there but even more importantly: getting responses from people about what sort of ideas they've got on these important topics and hopefully what you've heard this morning from Geoffrey has whetted the appetite and we can look forward to a really good discussion with the panel but also more importantly with the audience. There's just a couple of points that Geoffrey covered which I'd like if I could just to amplify a little bit more and talk to and perhaps we might be able to devote some more time to them during our discussion to come.

A couple of things: What is a constitution? There's all sorts of fancy definitions of a constitution you can look for but fundamentally a constitution is about power and the fact that we don't write rules down here about our constitution means that we are very opaque about how we talk about such an important thing as power. When you write it down in an accessible way you cannot escape what the fundamentals of a constitution are. When you don't write it down and you leave it opaque you leave discussions about power to be very opaque. Not talking about power and how it is distributed, and not talking about those sorts of issues is not informing people, it's keeping people in the dark. We don't do it for the local kennel club. If you're going to have a dispute about who runs the kennel club and how it's going to be done, everybody knows where the rules are. You go to them when you've got a problem. So why haven't we got the rules set out in an accessible way so that every one of us knows what the basic rules are? I honestly do not understand that. It makes no sense. In no rational system of organising people or organising power would you not have rules set out so that they would be accessible to people. And I think as citizens we have a right to demand as a minimum that the basic rules should be accessible.

Not writing down the rules also means we can't debate the content of the rules. We should always be debating the content of those rules. It's very important that we do not get complacent about how power is distributed. I'm a new New Zealander. I love New Zealand. There's no chance of me going back to the other place I call home. But the thing about having a foot in two places, I think, is that you've got a little bit of distance from time to time. One of the things that us new Kiwis talk about a lot, when we talk about us, is complacency. Before I came to New Zealand I had to do a bit of research on New Zealand. I knew New Zealand was bloody good at rugby. It was an interesting place for a long time. So we knew in Ireland that New Zealanders were people who liked to do things and innovate, often were the first to do things. So I did a bit of reading around New Zealand before I came here. I got a couple of history books at Waterstones in Dublin and did a bit of work on it and what interested me was that for a long time, and perhaps for a particular generation, New Zealand was God's Own. Think back to how for example in the area of economics how successful this country on one measure was in the fifties and sixties. Depending on which measure you use, New Zealand per capita: second or third richest country in the world. In my country people couldn't dream of having fridges, electronics, in the fifties and sixties. When I would go down the country on holidays: no fridges, no running water, we went down to the well with the buckets to get your drinking water. We went a kilometre and a half to the local well to get it. You didn't have that here. You had telephones! Everything was great - land of milk and honey! But in the economic area, and you read the history, you see, we just stood still, took some stuff for granted. Didn't react to a number of the changes that were happening in the world early enough and got caught short if we're being very honest with each other and we need to be honest, that's what happened. The history books tell us that's what happened.

So we've done it before - the complacency thing. And one of the reasons I got involved in this project is: I'd hate to see us get complacent in the area of power. When we started this project, Geoffrey and I could see some changes that were happening geopolitically. We had no expectation that the Brexit result was going to happen and I certainly didn't predict Trump. But they're just two examples of current phenomena - you can look in so many other jurisdictions in Europe, for example, you can see the changes happening there. But not just Europe - Asia as well. It's happening in many, many places. We should not pretend that we are somehow going to be immune from the impact of these things even if it doesn't transform us, it's going to transform the world around us. It's very important that rather than being onlookers, we are participants. One thing I would say as a new New Zealand who loves this place is: remember what we do here matters not just for us living here, it also matters for the wider world. What we do, people take notice of. We might be only 5 million, growing, but what this five million people of us does impacts overseas and what a good time it would be not only for us but for the rest of the world to see a country like ours say, "You know what? There's a lot of good in terms of how we organise ourselves, and we want to affirm core common values which enable us as a community to resolve our problems but also to give us something to aim for to make the world better, our world better for ourselves and for our future generations." So when Geoffrey talked about our constitution project being a little bit conservative, I agree with him about that because there's a lot of good stuff that is worth conserving and shouting out about and saying we're proud of what we've got and we want to keep it and one way of keeping it is to write it down and say "thou shalt not touch". We are agreed that this is how we're going to do things and we agree it in advance before the real pressures come on us to make us say, "Oh, for the short term maybe we should give this way, or for the short term we should give that away. Oh these minorities, God they get in the way when you're trying to organise things and when you want to get on with power." No! We know as human beings those sort of things can happen. What you do is you prepare in advance. You put the roof on during sunshine because you know there's going to be rain coming. You don't wait for the rain to come before you decide, "Oh that tarpaulin out there. That would probably be a good idea to throw it on the top of the house."

Sir Geoffrey talked about content. If you want to know what we propose and our ideas, obviously you can have a little look at the book. As he said we did decide to be a little bit provocative in ways. I was the conservative, for example, when it came to the monarchy. You'd expect me with my accent perhaps to be the one saying, "Out with Mrs Windsor and her whanau," but that wasn't quite how I saw things initially. But ultimately we talked it through and I thought "Yeah, that monarchy does represent some level of stability and continuity in terms of how we run things." I absolutely agree with that, but actually in that area of symbolism, now's probably not a bad time for us to say, "You know what, we should go fully native and look for our own head of state who expresses us now, we can leave the trainer wheels behind so to speak, say 'thanks very much for where you've gotten us to' but time for us to move on."

Geoffrey has talked about length of parliament - I couldn't agree with him more. I've spent time within the bureaucracy - three years is a ridiculous amount - ridiculously short amount of time to get anything done. It does not work and it leads to dreadfully narrow horizons. It has to change. But as Geoffrey says it will only change if there are increases in checks and balances because at the moment we were told by many people well you need three years because that's the only way to keep quote marks, excuse my bad language it's the only way to "keep the bastards honest". That's how it was put.

Now talking about those 'bastards', excuse me, and that'll be the last bad piece of language I use. One of the things that is most interesting, I think, that is changed and goes to the complacency piece and I'd like us just to put it out there and perhaps something will come back and talk to it. Context is always very important. One of the things that struck me about New Zealand when you look backwards is that in the 1960s, about 20 percent of adult New Zealanders were members of a political party. What's the number today do you think? Not even 1 percent. So the reason I've put that out there is that in the past political parties were what we used to refer to as 'mass movements'. So they were movements designed to help bring us together and corral us I suppose on views, but you could say that political parties were representative. They were intimate, they had strong connections to the community. The local MP would go along to the constituency meet up and they would definitely be told how they were doing by anyone who turned up and that's changed. There's an awful lot of spin. We're not the subjects so as to speak of political movements any more - we are the objects. And that does change the way in which politics works and it therefore must change the way in which we engage with each other. We have to find, I think, other ways of engaging with each other, other than having our views mediated through political parties. A point I compare is like I started this project and asked my friends, I have a few, how many of them were members of a political party. One. One! One! One person! I'm not a member of a political party. Just one person. 'Good on you!' I'm thinking. But we have to find other ways and the way that's been found as Geoffrey touched on in Ireland to try to re-engage people is this idea of the Citizens' Assembly - literally randomly chosen people like juries, think of it as a citizens' jury, just a lot more people, a hundred people, who are prepared to give up, for a little fee, a big chunk of time a number of weekends spread out over a couple of months to sit down, not knowing each other beforehand, listen to views being offered, listen to things like facts, science, experts, and see what they make of it all. And certainly in Ireland it's been incredibly transforming from a political perspective and I don't mean party political it has had impact on political parties but in terms of citizen engagement it's been transformative. Issues that in Ireland were considered to be off limits when you actually got people in a room, informed people and let people discuss honestly and openly and transparently, it was incredible what people were able to achieve. That polarisation that could potentially be there fell away. You can't be polarised, well it's very hard to be polarised, when you're an ordinary person in the same room as other people because when we come together in that way we talk - we don't shout, we talk. Social media: shout. Coming together like we do today: talk. Even if we don't agree, we talk, we interact with each other. So the Citizens' Assembly concept is one that's firmly staying in Ireland and one that's interestingly enough that's caught on in Europe and that's looking to spread out and we think that

in addition to trying to get the rules written down, other changes to the way in which we do politics and the way in which we do policy would be well worth including as I said the Citizens' Assemblies. We've got to find some other way of reintroducing intimacy into politics that's what we're saying. To reintroduce intimacy and understanding around power that's what we're saying. We're also realistic about power. That's why for us it's really important in our view, and others may have a different take on this, to really reaffirm the importance of respecting minorities in any going forward situation. When you have pressure for populism, who are the first people that are singled out by populism as a way of political culture? People who are not mainstream. Yes. Now if you're somebody who's been part of being not mainstream and you're the subject of attention, demonisation, you are devalued as a human being. You are excluded from politics. Now that may give a rush to the people who are in the majority who are encouraged by the populism but it is no way to build a flourishing community or society. And we know that. We have known that for centuries as human beings. We know all of that. So why, when we're in a state of relative stability would we not, knowing what human beings are like, anticipate that and put protections in place now? I go back to the reason you put a roof on typically is not for the sunshine, well in my case it would be because obviously with Irish skin sunshine is something I try and avoid - it's not for the sunshine - it's for the rain. You mightn't be sure when it's coming, but you know it's coming. It's on a repeat cycle and the same is true in politics. It's on a repeat. So we can't say we don't know about the problem. We can anticipate it. Let's put measures in place to prevent it. Some people say to us, well let's look what's happening in America, they've got a written constitution and that didn't stop Trump. And we're very clear about that. No it won't. A constitution can never stop the election and I think I'm now channelling my inner Trump notes, it's both of these things. The election of a Trump because you can never stop people giving voice to frustration. You'd be foolish to think that. But what a written constitution can do is it can put a halter on somebody like a Trump. For all of his ranting, for all of his Tweeting, what has he achieved? What protections has he been able to roll back? Some, I grant you, but many he has not been able to roll back. Why? Because they've got a system of checks and balances which they've written down. They set standards in their constitution which they have written down. And if he wants to change those it's hard yakker. Populism alone can't make them change. So we should learn, we believe, from those lessons.

I'm going to stop there because I'm conscious of time. There's much more that could be said but just to re-emphasise the point we're really looking forward to the korero to come. Please actively participate. If you don't agree with us, please it's really important that you say that. We really want to hear what people have got to say and most importantly we really want to encourage a discussion and a debate. That's why all of you have hopefully gotten out of bed this morning when you could have been doing any number of other things. So thank you very much.

[Applause]

## Speaker's Discussion

### Tim Watkin:

Thank you. Alright. Gentlemen stay there for a second because while we're getting the mics out for the panel to come and join us if you guys want to stay around the lectern I'm going to play devil's advocate and ask you a couple of questions. Just to change the tone and break it up a bit this is where I kind of be annoying for a few minutes. The panel's going to come and join us in a minute and we're going to talk. But I want to challenge a few of the things. Sir Geoffrey, you started, you talked about the storm clouds coming and said that democracy is so easy to lose, that global cooperation is shrinking. We are also though, we have muddled through. The argument against that is we have muddled through, through world wars, through depressions, through times arguably more serious than now, and you're being a Cassandra some would say by saying "it's all going to hell in a hand basket, we need this". Doesn't the historical evidence suggest that actually we've been ok, we don't need to rush to change this?



### Sir Geoffrey Palmer

Well, you know I think we've been living in a constitutional fool's paradise. Look at the troubles that the Brits are having with their own system which is just like ours. I mean what the tools you've had in the past don't necessarily work in the future and the future has got storm clouds of a sort upon it which our system has never dealt with. Climate change is going to be transformational. We know that. The evidence is there. People don't like it but it's true. And I just don't think that the idea that the way you did things in 1880 can will work now. It isn't so.

### Tim Watkin

Isn't that partly an argument against a constitution though because if you write down the rules in 1880 then you're bound by those rules from 1880? You're arguing that climate change would never have been anticipated at that stage. But if we make the rules now for some uncertain future we're going to bind ourselves.

### Sir Geoffrey Palmer

We have said that we do not want an inflexible constitution. Part of our proposals is flexibility. We have said very clearly that it has to be revised at least every ten years and it can be revised by a 75% majority in parliament. We do not want an American constitution that's impossible to change. We do not want an Australian constitution that is even harder to change.

### Tim Watkin

Andrew can I ask you: you talked about your shock in a way that we would have a constitution for a kennel club but we don't put down the rules for the way we run our country. The argument is the reason for that is it's too hard. We couldn't agree on the rules. That actually if you try to put with the best will in the world, people together in a room to try and actually figure out what the rules are, it would tear us apart.

### Andrew Butler

So a couple of things. First of all it's amazingly not hard for about 197 other countries. Apparently they're able to do that but we can't do it so I really can't believe that New Zealanders are people apart who can't come down and agree. Second of all, so the best way for a community, the implicit in that is the best way for a community to get by is to not actually talk about the things that are hard to talk about. In other words, let's find a carpet, lift it up, shove some stuff under it and put it down. That's maybe what you do when you're talking as an adult to children sometimes you say, "You guys can't be trusted and these things are too hard for you". But when you're adults, what typically you say is: "Yes we actually need to have to have a discussion about these things". What's really important about it Tim however, is how you frame it up. So long as it's not a contest of winners and losers, well you win if this goes in and you lose if this doesn't go in, but you construct the idea of the conversation as we all win because we're actually having a conversation about things that are really important to us then that's a really constructive conversation. And last, god almighty, that's not the right thing to say in this place, god almighty, if we can't talk about the rules to govern ourselves how the hell are we going to be able to deal with more complex issues like climate change? This stuff is comparatively easy because much of it we will agree on. But if we're afraid of having a debate just because there are a couple of issues we can't agree on, I have no hope for how we're going to be able to talk about the more complex issues. We have got to use this as a way of engendering an ability to have conversation about much harder things to come.

### Tim Watkin

I'd be interested in both of you on this because it's partly a political question is the that's even if we accept that there are times to have hard conversations, is this the time? Sir Geoffrey, you said

that we're you know blessedly in New Zealand not as polarised as some places. I would say we have some serious issues with polarisation. Maybe we've missed the boat. Ten years ago maybe we could have had this conversation, but right now Trump, Brexit, where we are in New Zealand even it's just the wrong time because it's too hard.

[Sir Geoffrey Palmer](#)

No, there's never a right time for constitutional change. That's what I learned in my political career.

[Tim Watkin](#)

It usually needs a crisis - most constitutions come out of crisis don't they?

[Sir Geoffrey Palmer](#)

No! The crisis. It's true. It does need a crisis, but we don't want to have a French revolution to produce change. We don't want to have people with their heads chopped off! We want to have a peaceful conversation about this. And if you use the techniques of Citizens' Assemblies for examples of what should be in your constitution think of this idea, the idea of incompletely theorised agreement. It's true we don't agree on everything, but let's find out what we do agree on, put that in the constitution and leave the rest for another day. We put up this agenda which is very ambitious, not all of it will survive. And I'm not saying that I know everything or anything. And we're not saying that. We're saying you've got to have the debate - you've got to have the discussion, you've got to have the discussion and you've got to organise it to find out.



## Panel Discussion



### Tim Watkin

Alright. Let's try to have some of that discussion. Thank you guys I really appreciate that. Alright thank you everybody, if you want to stretch for 30 seconds now's your chance while we just get these guys settled. Everyone who can, stand up and do three star jumps.

Alright, thank you everyone, that's your thirty seconds up. We'll keep pushing on because I think there's lots to talk about and the goal from here is to have a conversation with some of our panellists here to flesh out and try and expand on some of the ideas that Sir Geoffrey and Andrew have talked about. I'll ask a few questions as we have that conversation and then we'll start to bring you guys in. We'll bring the other two gentlemen back up to join us up the front and then we'll let you join in and until lunch we'll carry on with what you want to say from the floor. As our speakers have said I think that for them a big part of these event is for them is to actually hear people talk back at them so we'll make sure there is time for that. For those of you that have been at events here before you will know that I'm a big fan of questions and very strongly opposed to speechifying so when we do come to involve you, brevity is your friend. Questions are good, demonstrations and lectures are not. So, but look let's introduce - no you up here get a little bit of lee way.

Dr Huhana Hickey at the end - a lawyer again, academic consultant, runs her own company called Pukenga Consultancy, treaty disability legal rights issues. Beside her, Gabriel Brayne. Law and Arts student at Auckland University - she is also not just that - youth coordinator at the Auckland Women's Centre, co-founder of the Auckland Young Feminist Network. Welcome.

Beside her, Meng Foon, former mayor of Gisborne for 17 years and since August, New Zealand's Race Relations Commissioner so thank you for being here. And Damon Salesa here is professor of Pacific Studies at Auckland University, Pro Vice Chancellor Pacific. And fun fact, first person of pacific descent to be a Rhodes Scholar.

So if there's a question you've got that these people don't have a good answer to then I'd be surprised.

Let's just start by getting a feel for the room. I want to ask the panel but in the interests of representative democracy I want to ask the room first. Hands up everybody who actually agrees with the basic thesis that we need some kind of written codified constitution. [Muttering from the audience] Good - concerns are good. Ok, that's useful that's a majority, so you've got a sympathetic crowd. Panel, where do you guys stand?

Panel: Yes. Yes. Yes. Yes, but I want the opportunity to pull out when I see it.

[Laughter]

[Tim Watkin](#)

Alright, well let's break that down. Pros and cons for each of you in this discussion. Huhana.





[Dr Huhana Hickey](#)

Kia ora. I guess for me I sit on the Human rights Review Tribunal I've just had an unprecedented third term appointment and one of my biggest bugbears has always been about the rights of every citizen, *every* citizen. And as a disabled person, as a Māori woman, as takataapui, I've often sat on the periphery. I've never sat as part of that mainstream. So for me the human rights of people that aren't always part of the majority is really important and one of the things that has concerned

me is in our country we have begun amending the Bill of Rights Act. *Atkinson v Ministry of Health* case is a big example of what happened. Overnight, National turned around and stopped disabled people and others from the legal right to dispute their opposition to paying whānau as caregivers and as a result that scared me, because in this country we're not protected. The recent Bill passing, the End of Life Choice Bill, is another example. Disabled people have said en masse we have concerns. Now the issue of terminal and that is different. What we're talking about is the risks to at risk people because human nature being what it is, abuse is quite rife within the community. Abuse of our elder supports, all of that happens, and what has happened? We've now said 'yes' to a bill depending on the referendum at the election, but the Bill of Rights Act can be amended at any time and that places people like myself and others here at risk and that's the danger of not having the written constitution giving us certainty and protections where we don't have that currently so that's why I stand for it.

Tim Watkin

You could of course, your point is 51% of parliament and everything can go. But you could just entrench the Bill of Rights then. You don't have to go the whole step to a full constitution.

Dr Huhana Hickey

We could. I would prefer to see documents like the Treaty of Waitangi, the Universal Declaration of Human Rights, the Bill of Rights Act, the Human Rights Act becoming part of entrenched law, but to do that we need to make sure it's a very safe law to make that happen. But a constitution, a written constitution, helps us entrench that. At the moment under the Human Rights Act the Immigration Act is exempt and so disabled citizens that want to come to New Zealand to live don't get to come here unless you're a refugee. Takataapui whānau, if you've got a trans whānau member that you want to bring in - there's no automatic right. My doctor who's a damn good GP is Afghanistani [sic] and as a result she's had to go back to Afghanistan because they refused to let her husband enter New Zealand and so what we've got is great foundational laws that are getting amended and changed and we're making laws that are exempt from our Bills of Rights Act, our Human Rights Act. If we have a constitution we have an opportunity to entrench certain laws that we cannot take away the rights of citizens and exactly that right. I grew up around prisons so I know prisoners very well. I've worked with them and Arthur Taylor was absolutely right. Prisoners should not lose the right to vote and be part of citizenry. The best way to rehabilitate them back into society is to have them take part in the rights that we have to vote as citizens. By removing that right they remove that one part that gave prisoners the hope of believing they could be rehabilitated and back in society.

Tim Watkin

Moving on to Gabriella if you could hand the mic on thank you. Pros and cons for you.



**Gabriella Brayne**

Kia ora! I firstly just wanted to say as a second year law student who probably should have gone to more of her Public Law lectures this year, I am incredibly honoured to be sitting here alongside some pretty amazing rangatira whose mahi I have respected for a long time and a little bit nervous.

**Tim Watkin**

You're amongst friends.

**Gabriella Brayne**

In terms of studying law this year I feel like I sort of went into this degree very optimistic, especially around sort of Public Law with all of these expectations that it's this dynamic system that protects all of these fundamental rights and constitutional principles such as te Tiriti but yeah, unfortunately I've, through the cases that we've studied this year I've become quite disappointed in terms of the judiciary's lack of influence in terms of holding parliament to account when it comes to these really important constitutional principles and fundamental human rights. We quite often study these cases that interact with the New Zealand Bill of Rights and you'll read all of these amazing, complex legal judgements which outline you know how these fundamental human rights are being breached and these breaches cannot be justified in the context of a free and democratic society but then to see that these judgements are completely ignored because of parliamentary supremacy. And also in terms of te Tiriti I guess again we come across all of these cases which consider Treaty principles but they're more so a convenient political consideration as opposed to a recognition that te Tiriti is the document in which Māori never actually ceded sovereignty and in which their Tino Rangatiratanga was empowered and the whole - instead we've seen this whole dynamic completely shift and I guess te Tiriti is failed by our government in cases such as the Foreshore and Seabed Act to properly be upheld.

Tim Watkin

I'd like to pick up because I think the Treaty we'll come to in a second, but you talked a bit about fundamental rights and everybody has used that phrase and I'm interested from a younger person's perspective - "Ok Boomer" - let's look at this and say could you actually I still wonder are we in a position where your generation and the Boomer generation, Māori and Pakeha gender, all the issues that are so hot at the moment we could actually agree on a set of fundamental human rights. Do you think we're still in a place we could do that? What's your point of view?

Gabriella Brayne

It's a really difficult question and that's probably one of the main questions that I have in terms of constitutional reform is let's say in the immediate to near future if we were to create a written entrenched constitution, what would that actually look like in reflecting you know the political values of today?

Tim Watkin

The things in the Bill of Rights, are they sufficient for your generation do you think or do more categories, ideas, topics have to be...

Gabriella Brayne

In terms of my generation I think a hot topic at the moment has been around environmental policy with climate change being you know a pressing issue you know affecting the very future opportunities of my generation so I think more sort of consideration around environmental policies could be one way of looking at it.

Tim Watkin

Thank you. Can I bring in Meng and so welcome.



Meng Foon

Kia ora Tim.

Tim Watkin

Pros and cons and maybe with your Race Relations Commissioner hat on maybe you could up pick on the Treaty point too and see how we actually wrestle with that in a constitutional sense.

Meng Foon

Yes, I just want to acknowledge the church for inviting us here today and it's great to actually start the journey and like we've heard from Sir Geoffrey the journey's been started since 1992 or something like that, 1990, and that's the conversation because we don't quite understand what human rights are and nor are we taught these kind of things at school. We're not taught about constitutions and rules at school and until we actually get our young people actually understanding all of those aspects of laws and constitutions and they're big words you know and even the everyday citizen out there we're just speaking above their heads really, they don't actually understand - I didn't actually understand a lot of stuff regarding the United Nations until I actually entered into this and we've got a whole lot of acronyms that we use like CARD and UNDRIP and the Declaration of Human Rights and what are they? Until you actually look at them they're actually quite explainable, the right to freedom of religion, the right to a home, the right to healthcare, the right to education, a right to vote or express your opinion without demonising somebody else, and so it's going to be a journey and whatever it is, it actually needs to be co-designed because the Treaty is a co-designed, well was sort of co-designed, but it needs to be co-designed by our communities and we need to actually start at the grassroots and like Sir Geoffrey says you do need actually time, resource and well organised processes.

The reason why it's not exciting for us is because it's not hurting at the moment. We're not hurting. Until the time that we actually hurt then we actually start to change and the thing about it is that MMP came in because we had Mr Muldoon go 'Rah, rah, rah.' He didn't even want to leave when he left, he was still sitting in his seat and Mr Lange was trying to get into the seat. Probably didn't fit, but however, that the thing you see. MMP only happened because it hurt. And so I'll frankly say that constitutional change is not going to change climate change. It's not going to save those people that are surrounding our shorelines or anywhere in the world, this needs a treaty like Sir Geoffrey said we need a treaty and that's very difficult to agree, so I think we're just muddying the waters when we add climate change to it, but fundamentally and we seem to actually have a lot of knowledge on the American constitution, the right to bear arms, the freedom of speech, no slavery and all that sort of stuff. We have because it's been actually in the new often and they always talk about the constitution and the only constitution that I knew of when I was a young lad right up to now was actually the constitution of America but every day in New Zealand we do have constitutions like Sir Geoffrey said you know all businesses need to actually have a constitution, your charitable organisations, your societies and all that sort of stuff. So I think it's going to be a journey, a journey of education and it's little and often and the teaching of New Zealand history is a great start because that will actually come to get us to understand you know that putakitanga of New Zealand 1835 and then the Treaty signing in 1940 [sic] and then once we know what happened straight after the Treaty when most of the land was invaded and taken away that causes us to actually understand and then we'll say "Yes we do understand now we can actually work together." But if we don't understand then we can't actually understand to work together then we'll be doing it in fear and so it's very important that we actually start with education - primary for my purposes anyway.



Tim Watkin

Thank you Meng. on that point I'll advise everybody to - I've got a microphone so I can do a free plug - the Aotearoa History Show if you google that. RNZ has just made it and just released it. It will help you understand all of those points that Ming has just made - the Aotearoa History Show online now. Damon Salesa!



Damon Salesa

From the University of Auckland. [Auckland.ac.nz](http://Auckland.ac.nz)

Tim Watkin

Very good! Touche! Give us your pros and cons and this is Pacific Women's Watch - give us a pacific take on this - this would apply to the world of New Zealand, right, so we're talking about the Cooks, Niue, Tokelau.

Damon Salesa

I'm sure it's in the two books and I apologise, I really enjoyed the preceding talks but I haven't read the two books and I'm concerned because I know Sir Geoffrey's past that this has come up but one of the major constitutional challenges in New Zealand is that we don't exist in the way that most New Zealanders think we exist. That there's a realm of New Zealand that includes Tokelau, Niue, the Cook Islands and the Ross Dependency which complicates any question and of course there's another part which is outside of the realm of New Zealand but which was previously inside

it which is the only part that we've divorced from which is Samoa. So we actually have a situation where New Zealand has written constitutions. Now of course they had to be approved by plebiscite but we wrote constitutions in Samoa, we wrote one in Niue and we wrote one in the Cook Islands and they have quite different forms but they actually look a lot like what New Zealand had too so they're basically Westminster democracies that were inscribed constitutions, the only two amendments we've seen in Samoa have been the [unclear] to allow non-chiefs to vote because it went through with a chiefly franchise and then Samoa for it's, not for its sins but for its blessings, added that Christianity would be the official state religion, those were the two amendments that we've seen. So New Zealand does have another constitutional history that draws out many problems and what will happen in that regard is something that will probably be quite central to any meaningful constitutional discussion. What is the actual boundary of New Zealand? And as Sir Geoffrey said, most New Zealanders don't understand the constitution, most New Zealanders don't even understand New Zealand, they don't understand the northernmost part of New Zealand is Tokelau and our nearest neighbour is Samoa to ourself. It strikes most New Zealanders as a bizarre statement but it is true. In all those places you're born as a New Zealand Citizen you use New Zealand currency, it gets more complex after that. So there's a real Pacific eccentricity to constitutional discussions that's very difficult to have because New Zealanders assume that New Zealand's actually quite, well in England they call it the 'Little Englander', well most New Zealanders see it as little New Zealand not recognising that New Zealand is this huge entity that stretches almost across an eighth of the planet.

Tim Watkin

So would it be in those islands would there be if we went down this, then they could obviously be part of any constitutional discussion, but would they accept, would they want to, would there be buy-in?

Damon Salesa

Well that's exactly the issue - if we talk about minority rights and I guess you know, all of us are energised and obviously we're a group of people that are interested in the New Zealand constitution and we came, but actually one of the challenges is that if we buy into it as we've heard as a constitution that would protect the rights of minorities, if that's sort of the entry level then we begin with say for instance Niue. And are New Zealanders going to be comfortable building a constitution that meets satisfaction there?

Tim Watkin

Can it? Can it do both things at once?

Damon Salesa

Well this actually probably drives some of it. I guess and this is one of the questions you asked. The driver in constitutional making isn't legal, it is always something else, and actually that's where it all comes unstuck, and so I'm really concerned that actually what we would discover in the process of constitution making is that New Zealand's actually a set of fictions that don't hold in real life, that actually New Zealanders don't share the values that they think are shared, and that when you start litigating them, things fall apart. I mean New Zealanders say they're committed to an egalitarian equal opportunity, but very small laws that affect people's pocket books cannot pass in New Zealand because I want to be able to protect, for instance, capital gains on my house, you know?

We profess values that actually most New Zealanders don't live up to, I suspect. Most people in this church in this moment agree in ways that most New Zealanders won't, and when we open

those things for debate we open a relitigation of the Treaty. I mean we've talked about how most people here would agree with Sir Geoffrey that the Treaty should be at the centre or at the beginning of what we do, but actually I'm not sure that's a majority position in New Zealand.

Tim Watkin

Alright, let's talk about the Treaty and if we could go back to Huhana and because I think the Treaty is worth a few minutes to quickly go through and we'll try and keep relatively brief answers and we'll crack through a couple of things and then let people ask. But the Treaty is going to be a very hard part of any constitutional discussion, right. I mean Sir Geoffrey talked about the colonial tinge, but people's idea, I mean our constitution is based on a lot of colonial ideas which has been argued we should be very proud of but there will be a number of people arguing decolonisation getting rid of those very ideas, actually shaking them off.

Dr Huhana Hickey

Well, the reality is New Zealand is based in the Pacific Rim so we're Polynesian as a country. When we were colonised they introduced and adopted northern hemispheric models so the Westminster rule of law and all of that. They transplanted them into New Zealand. Now when we look at our institutions, they're all founded in northern hemisphere so I'll take disability as an example and Ministry of Health which is appalling to those of us that are disabled, that are medical disabilities. Now the problem you've got is that it came to New Zealand but it transplanted western ideas of health and wellbeing. It transplanted western ideals around how to do that. The systems, the hospital set ups, we don't have hau ora services sitting within our health system that sit equally or that sit alongside contemporary western doctors. We actually have a dominant western framework which is of no value, no use and of no health and wellbeing for the majority of Māori which is why we have the big gaps, so what we need to be doing is looking at our institutions and saying "do we want them from the western hemispheric model that transplant the European ideas, or do we want something that's uniquely specific to New Zealand?" And that it a very Polynesian look along with the modern knowledge. So we need to know that.

Tim Watkin

So how can you imagine that Polynesian look tikanga sitting alongside the Magna Carta and that what these gentlemen argue is the best of those northern hemispheric ideas?

Dr Huhana Hickey

Well the principles of partnership for a start - you can say that in theory but when they, say when we develop the United Nations Convention on the Rights of Persons with Disabilities, UNCRPD, they New Zealand refused to send a Māori representative over to discuss indigenous models so the international community paid for me to go and I became the indigenous rep for the development of that convention. Now that's the problem we've got. We talk partnership but we don't do partnership, and so when we look at the principles we need to look at what are we doing to enforce those principles at an equal level and partnership is one of those. If we're not partnered equally. In Canada for instance 3% of the population, there's three indigenous groups, different ones, they make up the majority of that 3%, that's the total, we're 19%, and yet they have an indigenous parliament over there. We don't even have that in New Zealand, we don't have equity of power sharing. We don't have, our iwi, our hapu don't lead as far as being able to take over the governorship of Māori lives. Now this started changing with the Tuhoe settlement where Tuhoe started to gain some part ownership of their health services, their social services to be able to be in charge and change the wellbeing by having the leadership to deal with their own people. While we're not doing that our people are going downhill in health stats. Our people are dying at an earlier rate. We've got the highest OECD suicide rate in the western world of indigenous youth so if we don't have partnership we've got nothing. Unless the constitution gives us partnership it will

become a watered down version of what we've got right now. The one way to reduce Waitangi claims is to put us into partnership equally in a written constitution.

Tim Watkin

I wonder if anyone else wants to pick up on any of that? Either agree or disagree?

Gabriella Brayne

Kia ora. I completely tautoko everything that Dr Huhana has just said and I don't think there's a lot I can really add to that. I've already touched on this before but it's quite interesting because you know when we hear Jacinda say that the Treaty is the manifestation of Māori kaupapa such as manaakitanga, kaitiakitanga, etc., it sounds all very nice and lovely, you know in theory. But the reality is when the Treaty or when te Tiriti was signed it was signed as a constitutional document which protected Māori to Tino Rangatiratanga over Aotearoa, over their taonga and the Crown were granted kawangatanga over their own subjects. Obviously that is not, our current system does not reflect that model, due to the obviously the mistranslations but also the whole colonial agenda of how the Treaty has been dealt with within New Zealand politics since the signing of te Tiriti. So I think, I mean I'm a bit of a radical decolonialist when it comes to this topic, I understand that because these colonial values are so deeply entrenched in such a complex way and our current political makeup as a country the whole process of decolonising or every achieving the full extent of decolonisation in which Māori sovereignty is recognised is an incredibly difficult task. And I think that's why we have the Treaty principles, you know, which I guess create a sense of not compromise but in a sense, no - compromise in terms of, you know, biculturalism and partnership and moving forward effectively as a nation but I do think in terms of you know if we were to look at a written codified constitution I think Māori and indigenous voices need to be at the forefront of those conversations in order to ensure that, you know, these, our constitution can be decolonised as effectively as possible and recognising the injustices of the past, so yeah.

Damon Salesa

And so I tautoko all that has preceded me. But I think what happens in these conversations about decolonisation we miss an opportunity where we don't look at where New Zealand has decolonised. I'm not saying you two, but just people more generally instead we look to places like Canada, Hawaii and other places and overlook the rest of the Pacific which has been decolonised and the challenge of decolonisation needs to be separated from a kind of economic and social justice and so I think for instance the people's life expectancy in the decolonised world is far lower than people's life expectancy and even indigenous people's life expectancies in places like New Zealand and so there's a real, and I raise that because I think lying behind this is this question of inequality which is one of the reasons I think for this increased disengagement with politics in New Zealand. It's not that we don't have a constitution, it's not that we're not teaching Civics, it's actually just the fact that since we've seen disengagement increase at the same levels of inequality increasing and levels of poverty especially amongst Māori and Pacific and rural New Zealanders at levels we haven't seen since you know before the second world war and so if we actually want engagement, we have to build a platform of social and economic justice where people actually have the same opportunities to participate otherwise when we have our Citizens' Assembly we know who's not going to come. Whatever else happens we'll have the same - we know who doesn't turn up to juries, we know all those and juries are compulsory and it still happens, right. We know who doesn't get the drivers licence - we know all those things. And so we have to make sure I don't know I think for us to have a proper constitutional conversation we have to have a platform where people participate equally and that includes what a decolonised constitution would look like.

[Kia ora, kia ora]

Meng Foon

So what we don't talk about is actually the value proposition. We talk about the past and we talk about this and we know that if it was actually constructed the right way what is the value to New Zealanders generally so we don't like the stats that we actually see at the present time and we just heard them along the panel but what is the value if we actually had a constitution? What would it look like? In the future? And if it's said that look, educational opportunities for everyone would enhance, better health statistics would enhance, there would be less suicides, we'd be living in a safer country, our value proposition of better wages, above the living wage would be part of this constitutional reform, and so we need to talk about the values.

Tim Watkin

When we start to talk about these things are we asking a lot of a constitution?

Meng Foon

Yeah, sure and why not because it is a big document, this is not just a two day sort of thing. In America they constructed the thing within a couple of years. But the conversation has been going and so we actually need to look at the value proposition. It's no different to at home, or when we construct our charitable status, we say: "What is the thing we want to actually do for our people? What do we want to do for the animals?"

Tim Watkin

I just because what these guys have suggested in terms of what we want to do is a relatively constrained, limited constitution, because I think they're concerned that if we expect it to be able to deal with all of the issues of ill and debate and facing us right now it'll just collapse in a heap.

Meng Foon

But you don't want to give up because it's too complicated. That's what real life is about isn't it?

Tim Watkin

But it's the art of reality too isn't it.

Meng Foon

The art of reality is that you aim high. You have a great vision and you'll end up somewhere. You know? You don't just sort of say let's just start at the bottom and we'll end up half way and have a worser [sic] thing than we have at the present time.

Damon Salesa

You get stuff in that people don't understand which is great stuff when they figure it out later and you've done the right thing. I mean I think that's what's probably, I mean if it's the art of the possible, which it will be, we need far seeing that sees beyond what most new Zealanders see, I mean that I think we all might imagine where we'd like to be but the process of getting there is going to be very difficult.

Dr Huhana Hickey:

What we need is to have the core value laws that we want to have entrenched within the constitution, but it needs to be broad enough to be able to expand if needed. Values change over time. the next generation are going to have a different set of values and a different set of priorities



and that needs to be recognised so as suggested every ten years we review and we look at that but we have some core bottom line values that aren't as easy to shift as doing what they did in the Atkinson v Ministry of Health case. We have the core set of values that give the basic rights to all citizens but knowing that we will reprioritise every now and the unlike the American constitution where they say that guns are a right, blah blah, without recognising that they're not dealing with the wild west any more but they're dealing with their own population of incels that is seems like to kill because they can't get a girlfriend.

Tim Watkin

That's an interesting point isn't it because constitutions have the fear I think a lot of people have of constitutions is that it binds you in a time and place.

Dr Huhana Hickey

Yes.

Damon Salesa

I mean one things I really strongly support is the sixteen year old franchise and civics in schools but I'm also very nervous about Civics in schools and history in schools. When I was teaching history in the United States we had what was called? The History Wars, which is what is the curriculum. You know and we just saw in the last week we've now got a faith based exemption to science education, so once we put these things, once we open that box, we start, we all of a sudden put the state in the place where it's actually doing those things and while we might think that Civics education is obvious and we might think that history education is obvious, it's actually, history is a really contested space and whose history gets taught is going to be really open to litigation and is going to be an arms race about who writes the text books and makes them cheapest and gets them into schools and unless we - we then come back to trusting the government and the Ministry of Education to delivering all those things for us which at the moment we don't trust them to do those things  
[Laughter]

Tim Watkin

Which is why there's this very good series on RNZ...

[unclear]

But look, you're right, history is a phenomenally contested space, and so you're right, it's what Civics, what history and so I take your point.

Gabriella Brayne

Fun fact: Damon was my history lecturer last year so completely tautoko again everything he's just said in terms of the importance of making sure that our education is consistent and is an accurate reflection of our country's past, but it's quite interesting because we're often in you know law school have this conversation around constitutional reform and it's always presented as a debate between two extremes. I guess like on one side the model we currently have now in Aotearoa you know which it's unwritten, it's not entrenchable apart from the Electoral Act, compared to like the United States which has obviously had all these immense problems about the second amendment and this whole issue around you know codifying a particular sort of set of political and social values of one context and how, you know, difficult it can be actually you know when that context changes how should the values and politics of the constitution also be reflected in that sense of change and that's why I really appreciate what Sir Geoffrey Palmer and Andrew Butler have sort of presented in terms of not fully minimising parliamentary supremacy or the value of democracy even though you do raise a very good point in terms of democracy not being an absolute system, I

mean voting rights is probably the prime example of that with what Dr Huhana was saying in terms of prisoner voting rights. We're literally sort of sorry, we're literally preventing democratic participation from people who are on the margins of society you know prisoners, 55% or over 50% of our prison population are Māori 55% of this prison population are on the benefit, three quarters are victims of violence, the mental health statistics within our prisons - it's absolutely shocking and so the current sort of system of democracy that we have at the moment is elitist and it's not fully absolute and I think you know in terms of talking about women's rights and feminism, quite often we celebrate the fact that we have universal suffrage in Aotearoa. When we don't, you know voting is a privilege, it's not an absolute right, and sort of going back to that whole conversation, sorry I went on a complete tangent, obviously we have to recognise that yes, parliament is a representation of democratic values to an extent and that sense of democracy needs to be respected which is what the 75% rule in terms of a provision which breaches a fundamental human right would have to pass in parliament in order for it to actually succeed. Sorry I hope that made sense.

Tim Watkin

[To Sir Geoffrey and Andrew Butler] I think you want to make a point - can we bring you guys back in and we'll start taking questions from the floor in a second but Meng do you want to make your point while you're doing that?

Meng Foon

So when you actually have a look at the Human Rights - I mean who wouldn't want what's not in the Human Rights? And if you know if you actually just had a referendum on voting to entrench the Human Rights in the constitution that would be a great start. Because it actually gives you values as well as principles and it also it actually, you know the Treaty of Waitangi is nothing to be feared, it's actually quite a kind document. It actually allows a system of us all living together, cohabitating fairly, but at the present time is not fair. That's all we can say. And so if we actually think step by step that we can actually move through this, and see what I think is that some people would just want this thing to happen just in one go. It could be two or three goes at it. It doesn't have to be all done in one thing because it's like life. We have big aspirations to actually own a home so you start working, you start saving, you get your deposit, and then you start house hunting and then you start paying off the mortgage and then you've got to give it away again and so it's a process and so constitution reform or writing, having a New Zealand constitution, does take steps at a time and it might take three elections to do that.

Tim Watkin

So Sir Geoffrey's probably thinking three lifetimes at the moment! But come in guys and I will as soon as Sir Geoffrey's spoken we'll take a question.

Sir Geoffrey Palmer

I'd just like to make four points that have arisen from the very excellent panel that we've heard - I must say I was most impressed with it.

The first point is that we do propose in this constitution, although we did not discuss it, an environmental right and that environmental right is entrenched, it's like the Bill of Rights and it will lead to court cases if government policy is defective which is most certainly is in this area, but it won't necessarily lead to change because you can't run the essentials of an environmental policy through the courts. They can look at that policy and see if it's good or bad but if in fact it's in breach of the environmental right the legislation will have to be altered rather than the court making what the rule is. That's the first point.

Second point is that the notion of entrenching the Bill of Rights as a first step is a good one. That's what I tried to do when we first passed it, but the time may now be ready for that, but I'm always surprised in a country which is so used to innovation, that in relation to constitutional matters we're so slow. The second point that I want to make is in relation to what Meng Foon said about climate change. My concern about climate change is that it will alter the nature of our democracy. That's why I'm worried about it and that's why you need a constitution first so you can't have it eroded. The history of democratic controls and human rights everywhere is that you don't lose them all at once - they go one at a time. Slowly so you don't notice. And I must say that the reference to the Atkinson case makes the point that if you had an entrenched Bill of Rights that you couldn't treat disabled people like that! And you shouldn't be able to with a contrived majority in the dead of night in the parliament using urgency.

Now the third point that I want to make is that the realm of New Zealand is a really interesting topic. Let me start with Antarctica. Our claim to Antarctica is through a British order in Council in the 1920s and I am not sure that I agree with our claim to Antarctica because I think Antarctica should be run through the Antarctic Treaty which will come to an end very soon if we don't do something about it. When it was treated as an international place, a global commons that you couldn't wreck. And I think that's pretty good in relation to Antarctica, so I don't like the idea that New Zealand thinks that it could run part of Antarctica, especially the Ross Sea part, which might have minerals which if you took them out would be probably pretty disastrous and you couldn't use them anyway for climate change reasons. When it comes to the Cook Islands and, Samoa's different. We certainly are very happy to give constitutions to people like that but we won't give them to ourselves in case they inhibit us! But we're happy to inhibit *them*. So I do think that in relation to the Cook Islands and Niue they are going to have to be allowed to decide what they want to do, and you can't allow them, if they want independence as the Cook Islands often says it does, then the question, New Zealand holds citizenship over them as a sort of thing to beat them with and that's really wrong. But they do have to be looked after and Tokelau has got a series of problems as well, and they have to be handled properly and sensitively and I think it's really important and I do say this.

The last point I want to make is the Treaty. When we related the jurisdiction of the Waitangi Tribunal back to 1840 I got more mail than any other subject when I was a Minister and people hated it, but let me tell you it has changed New Zealand in good ways. There is more acceptance of the Treaty now than there was 30 years ago, a lot more, and that is a good thing. You've got to keep advancing you can't go back and the nostalgia of sort of some of the people in my age group about Māori is not an edifying spectacle. Now I do think, the thing that convinced me about the treaty was being a law student on the south side of Chicago surrounded by a large number of black persons who were fantastically underprivileged, and I did not want to see in NZ an underclass defined by race and the way into that was the Treaty and it is enormously lucky we had it and I remember Bob Hawke said to me, he sent a minister of aboriginal affairs over for three weeks to find out how we managed our race relations better than they had. They're still looking at that. We are not good but we could be worse.

Tim Watkin

Alright, let's hear from - I'll wander around I guess is probably the easiest way. Christine, I'll start at the front.

Audience member 1

Thank you. Anybody can answer this but I'm particularly looking at you, Mr Palmer. Because over the years you've passed laws that have supposedly been progressive for Māori and in actual fact they've knocked us back further and I then hear that you're presenting again from 1990-2010-2015

and bring out the constitution of New Zealand again, accompanied by your learned gentlemen from Russell McVeagh. So I'm asking myself in your conversation in your panui to the hui, New Zealand doesn't have a constitution. Now in my belief system New Zealand does not have a constitution, the New Zealand government does not have one. The tikanga Māori people of 1835 *do* have a constitution. It's very loud and it's very plain and I assure you from my tikanga point of view, being of similar age to yourself, I have carried that belief system and I'm really questioning as to why this panui says 'New Zealand does not have a constitution.' I totally agree, New Zealand government does not and it should gear itself up to forming a partnership with the holders of the only extant treaty collaboration of New Zealand which is me, a Māori person, so you consult me, please, all of you partners in your panel and Radio New Zealand, because I want to be consulted. I'm a person who holds a constitution. I'm notifying you publicly: I still hold it. Therefore your lack of one requires you to consult me, because I have one. I do not intend to let that constitution go lightly in holding it no more degradation can come to māoridom that currently exists. That panel have spoken to it. I know about that degradation because I constantly see the end of it which is homelessness, 70% of the homeless in New Zealand are Māori. Therefore my constitution needs to be standing before yours comes along and superimposes another colonised system on top of an existing one. I don't want to sit there. Please answer me.

[Sir Geoffrey Palmer](#)

I think there's a great deal in what you say. When we were getting these proposals together we went to New Plymouth and addressed the Māori Women's Welfare League Annual General Meeting and had a lot of discussion with them about how we should go about it. The question - the essential elements of your question are these: "How do you go about producing change?" You have to have full consultation with everyone. That is expensive and important. You have to set up processes and money to do that because you will not get any progress otherwise. I think essentially you are right.

[Audience member 1](#)

Absolutely and I ask you to define to me who funded the journey that you went on to consult with people because in my constitutional right I have no funding to panui to the world of Māoridom that this constitutional effort that you are bringing out [unclear] I do not have funding for that. I'd like to know where you go funding from in the day that you took it into New Zealand please.

[Sir Geoffrey Palmer](#)

We got funding, some from the Law Foundation but we funded a lot of it ourselves. We didn't have any external funding other than that at all. We are doing it because we think it's important. Now I mean perhaps that's a mistake and an old fashioned notion but that's the case.

[Audience member 2](#)

Yes, my question is that if we have a new constitution, inevitably it'll include a Bill of Rights, will it also include a Bill of Responsibilities so that parents have a responsibility to feed, clothe, house their children, immunise, and protect them from drugs and household abuse?

[Andrew Butler](#)

Starter for ten! Good question, obviously, something that was raised with us quite a bit, people want to see not just a focus on the individual from the point of view of what the individual can ask of the community but also what the community expectations can be of individuals participating. We did think about it, we did try and see how we could write it up. It became quite hard and that was an area where we thought you know what there was going to be such variation over time in terms of how people and the community think what is a reasonable expectation for people to have

of other people in terms of responsibility that's going to be the sort of thing that's going to be hard to entrench in a meaningful sort of way so we touched on, we thought about things like compulsory voting, but the specifics that you've talked about we absolutely did talk about, we talked with other people about them but we felt ultimately, a constitution, a written constitution probably wasn't the right place but we would expect that if there were discussion around a written constitution and suchlike that would come up and there could be other solutions found for the community's desire to express itself on those things.

Tim Watkin

To push back on the gentleman's behalf, you made the case earlier that you know things shouldn't be too hard for these conversations, your argument seems to be that this is too hard?

Andrew Butler

No, the conversation was an easy conversation, that's the important thing, so it was an entirely appropriate thing to converse, but what you've always got to make is you've got to make a call whether or not putting something into a constitution is the right place for it to be located. The conversation is the important point as a process enables us to have a conversation around that. This conversation for an example on the topic you've raised is one that comes up in Ireland, so we've got a flexible constitution, we're not like the Americans, in fact America is a complete outlier it's so hard, America and Australia are complete outliers it's so hard to change their constitutions. Most normal societies have something that's got flex so you can have the conversation. So we'll always be part of a conversation. The answer is going to depend from time to time on where the community gets to, that's my point.

Tim Watkin

Huhana was going to join in.

Dr Huhana Hickey

We already have an example of that in the Health and Disability Commissioner's Code of Rights which also talks about responsibilities. It's not that hard to do, and like a written constitution every ten years we'd need to review and see whether we're on the right track. Its, you know, it's not that difficult but we've got to come to agreement what are the responsibilities? One of the things that we can actually easily implement it is civil education in schools because once we start teaching citizens rights and responsibilities they start to understand what that means. It's not just about "I've got a right but I've also got a responsibility". It goes both ways. And one way of doing that is we start educating early. And teaching people, And one of the big issues there is we've had over 850,000 people not voting in elections and then they're the first ones to moan when a law change takes away their rights. Well, don't they have a responsibility to vote? And that's the question I put to them, but they've opted out. So we have to have a way of doing this where people feel the desire to opt in and that's part of the problem.

And whaea I just want to say, you know, we don't talk about the Declaration very often in New Zealand and in fact on 29th October I think it was it was 178, years, 179, I think and nobody talked about that. We all talked about having a long weekend off and having a barbecue but we don't talk about those essential documents. In law school I was actually told not to discuss it when I tried to raise it because they said to me it had no relevance to the Treaty and I said "but how can it not?" because it's actually the precursor to the Treaty and it's extremely important because it told us that we never ceded sovereignty and I've I had trouble with that whole journey with my law lecturers that would not allow me to take that further and this is part of the rights and responsibilities because that talks about the reciprocal relationship that we have, the partnership.



And that's why I'm so hot on the idea of partnership and part of that is we talk about civil rights we're also talking about a partnership here. We're talking about the partnership is saying "I'm a citizen of New Zealand therefore I have the right to vote, I have the responsibility to vote, that tells me to my MP you're my employee and therefore because I voted for you I want you to listen to me," and they've gone to a complacency where they talk to you but they don't necessarily listen and that's one of the issues that's broken down.

#### Meng Foon

One of the things Margaret Motu she canvassed the taha Māori side but also taking from the 1835 and 1840 documents of the putakitanga into the Treaty of Waitangi is that there's not a lot of trust because once you entrench it in law can you change it? And that is the fear of parliament, of Māoridom themselves is that if you have the debate in parliament the numbers sway one way or the other - it could change the values and articles of the Treaty and that's why sometimes they say well is it better in or out? And the other issue that Sir Geoffrey brought up was republic. So the relationship is with the Crown even if the Crown may be a lame duck at the present time but it's still there as that relationship between the Crown, there's not a lot of trust on the government to actually do what they've done because of what they've done in the past and so you know, teaching history, building trust will be the first part - it might take a bit of a journey, than the quickness that we want it and they, māoridom do say 'Please don't rush it, please don't rush it because we want to get it right'.

#### Gabriella Brayne

I think it's yeah, I always find it really difficult because I think in Aotearoa they quite often have a habit of saying "yeah we might not be perfect but look at expert A or look at Australia or look at the United States in terms of how shocking their you know indigenous rights protections are" and I don't think you can ever sort of use the sort of shocking policies of another nation to justify our own shocking policies even though they might not be as explicitly unjust, it's still highly important that we have these critical conversations so I completely tautoko and thank you for bringing up that really important point. And I do have a lot of concerns just because I mean, yes, obviously there is some recognition of Treaty principles but again it's more so a matter in the context, in the political context of Aotearoa as a mechanism for compromise and it's more so just a political consideration so I think in moving forward in terms of recognising or having discussions around what a codified version not even a version because like you said we already have our constitution - we have all of these mechanisms in place - that we should be looking at. Again we still in law school don't learn about the Declaration.  
[unclear]

#### Tim Watkin

Alright, let's move back - we've got a bunch of questions queuing up here so let's if we can try and keep in the time for lunch - if we can try and keep the answers as brief and to the point as possible and the questions too please.

#### Audience member 3

I'll try and keep that very short. My name's Suzanne Loughlin and I'm doing PhD research on New Zealand's intervention in Afghanistan, support for the so-called 'War on Terror' and throughout that research, or through doing that research, I have become slightly familiar with the Royal Prerogative, although I can't say it's a very easy thing to read up on and to understand, and when you talked about 'lack of appetite' perhaps I think as one way to put it for constitutional change, when I've been around and talked to friends and people and have said not only is it only a cabinet decision, there is no discussion about the deployment of troops, there is no discussion about the

deployment of troops overseas, there's not debate rather, debate about deployment to combat, there's no need to review the extension in Parliament. Not only is it made in Cabinet sometimes, but even in a smaller group of Ministers with the power to act which I think was four Ministers from what I can tell. I think if people had some understanding and I go to the media about this as well - I think there's very little debate in war education, discussion again in media about the way New Zealand deploys and uses its troops overseas and some of the reading I've done on the Royal Prerogative that has developed some appetite in Britain as you say for change following the Iraq debacle, but I certainly haven't seen anything here around that and I wonder what your position is on the Royal Prerogative not only around troops but around treaty making, so the TPPA the Trans Pacific Partnership again, if there was fuller debate I think you actually could get some more traction on constitutional change.

[Sir Geoffrey Palmer](#)

We have dealt with both those matters in our constitution. To commit troops in combat overseas you'd need to have a parliamentary resolution, and treaties have to be properly dealt with in parliament as well. It's as simple as I can make it. Andrew, do you want to add to this?

[Andrew Butler](#)

Yes, so that was a gap we absolutely identified in terms of the way in which the constitutional arrangements work so to be a bore if you want to have a look at what we have proposed in section 106-107 of our proposed constitution I think you'll see something there which would more meet with your view of the world and our view of the world. It seems to us as wrong that a cabinet decision can be made in that way with little or no scrutiny and no involvement of the people's representatives.

[Sir Geoffrey Palmer](#)

I'd add in relation to Afghanistan, there were two parliamentary debates that approved that.

[Tim Watkin](#)

Because of our lack of mics today I'm giving mine away so I have limited ability to intervene so I'm trusting you please to get straight to your questions.

[Audience member 4](#)

Kia Ora. Christine. Ko National Council of Women thank you for an extraordinary discussion bringing out very critical issues for New Zealand society and in particular I see human rights as being what is at the core of all of this. I see climate change coming at us as Sir Geoffrey said in an incredibly disruptive way that will affect human rights right across the globe and in New Zealand and we need to be prepared for it and the type of discussion that we are having now is critical for that but what has not been discussed and I cannot see the connection with what we are talking about today is our financial systems. And what I see is GDP as being an incredibly hollow system that is hallowed - it brings us our credibility, our success, which to me is meaningless and totally cuts across everything that we're talking about in terms of sharing an empowerment of and human rights sense, and so the question is: How does that connect? How do you see that coming in to support the criticality of the discussion?

[Sir Geoffrey Palmer](#)

I think that parliament has two classical functions. One: to make law. Two: to tax and spend. Those are the two things it does. The problem with the, the way I look at it these days is this: there are limits to economic growth and they have been reached on this planet and we cannot go

on expecting that our politics is going to be advanced by an appetite for continuing economic growth when it isn't possible and will be very disastrous. That means that the distribution of the wealth becomes an even more important problem than it otherwise would be and we have got massive amounts of inequality and we have to address that. All I'm saying though in this regard is that in the constitution you have to put a set of principles and you have to set a lot of basic limits. You can't substitute yourself for two thousand pages of statute law which is what New Zealand has - we have a lot of legislation in this country. We're an old democracy and we've been legislating for years we never get rid of it - we just keep adding to it and no one can understand it, except lawyers and they can't either! [Laughter]

Tim Watkin

We've got a question here and then we'll come up the front. We'll come back to you in a moment.

Audience member 5

Kia ora, my name is Tanya. Ngati Pakau, Nga Puhi can you hear me? Ngati Pakau, Nga Puhi. I've been told to keep it really short. I just have a quick question: you're talking about the constitution being a chance for partnership. When the Treaty was signed by my ancestors, or not signed by some of them, that was for partnership with royalty, so if the constitution becomes that part of the law, does that affect the law with the partnership that's been signed because wouldn't that null and void my right for partnership?

Sir Geoffrey Palmer

'No' is the answer to that. It does interest me that for a long time Māori have wished to have the connection with the Crown when it was the Crown who produced 18,000 troops in New Zealand to fight them. And the thing that worries me about this is that if you are talking about New Zealand as a nation state, it can as a matter of law inherit all the obligations that the existing nation state has, and we have made that very plain. It makes no legal difference at all. I admit that there is an emotional question about that, but look, when Māori have gone to the monarch in the 19th century and the early twentieth century many times, the monarch takes the advice of her New Zealand Ministers and she is obliged to do that so whatever their advice is, is what goes.

Tim Watkin

Thank you. Alright, well we'll take two more questions and one of them will be here.

Audience member 6

Thank you. Kia ora. Irene. My name is Irene. It's a short question. I don't know about the answer. Sir Geoffrey, I remember when you produced the principles of te Tiriti. Now it's always bothered me because I think te Tiriti is clear in itself. It spells out exactly what the obligations were, what the relationship was, is there some obscure legal reason for putting the word 'principles' in? Because I totally disagree.

Sir Geoffrey Palmer

Well, I remember I did that too. But let me just say this. That we put section 9 into the State Owned Enterprises Act that led to a judicial decision which the cabinet wished to appeal and which I as Attorney General would not permit them to appeal and what we did was to work out an agreement with Māori as to how we would protect their interests in the state own enterprises act and that went through and I was very pleased that that was done. But there was a feeling that somehow or other we had to make greater clarity. Now I disagree with you that the Treaty is clear. It is an extremely brief document and it is to some extent a creature of its time, and it's a long time

ago. What we need to do is to try and not get rid of the Treaty and we certainly shouldn't change its text. I think that would be absolutely wrong. But we do need to arrive at some understandings from a practical point of view. If you, the Auditor General a few years ago produced a one of those lovely maps about where the Treaty sits in New Zealand. It is the most confused and untidy picture you can imagine. And one of great complexity on which my son wrote a very good book.  
[Laughter]

Tim Watkin

One last question Jane. I guess you're allowed to call dibs.

Jane Prichard

Thank you. Jane Prichard, founding president of this organisation which is hosting the meeting today - Pacific Women's Watch New Zealand, linking to Asia Pacific Women's Watch on which executive I served for many years. You've asked us from this meeting to try to help you take this forward. So - let's see what I can do. The last twenty five years I've founded three organisations, one network, and reviewed with a small group a national women's constitution, and an international women's constitution. You've been up and down the country and you and I know the same thing: nobody is interested! And they want to put it in the too hard basket! Let's put it off! So there are two things to be done: first of all well I've got it over you. You say you're seventy seven. Do you want to see it in your life time? Then get on with it! Secondly, nothing will happen until you, with a very small group of experts, look at the Treaty, look at what you've found around the country, look at what you've written and put out a draft. And when people see something on paper, that may become a reality, then they'll want to discuss it. And can I suggest to you perhaps you might think about that?

Sir Geoffrey Palmer

We've done it! There's a draft in the back of the second book in both English and te Reo.  
[Applause]

Jane Prichard

Well there you go!

Tim Watkin

And it's small and perfectly formed, just as you've described it right? It is just about bang on noon and I think we're probably at a time now when I think we should say thank you to these fine people who have come from around the country and around the city to talk to us today. [Applause]

I'm sure there is lunch outside there, so I'm sure some people will be staying, some will be going. It's been a fascinating morning. These are important issues, these are weighty issues, these are not easy issues but if we don't talk about them we don't get anywhere, so thank you for being part of the conversation. Thank you for your patience, your interest, your questions and for being here at Somervell today. God bless and thanks for coming. [Applause]

Fala

Before we all go I do believe we have a few thanks here. To thank our panellists today and our guests as well. I believe just like what everybody has said today: we've learnt a lot. As a migrant all the way from Tuvalu to here, and climate change, thank you for that discussion about climate change, yes, it's quite dear to my heart because it's about the survival of my people back home.

And the constitution, and as a unionist as well, I believe that just like some of you people said here today the document has to be first of all accessible because otherwise our people but let alone pacifica people, our migrant people, we will never exercise that power because we don't know what the hell is written there. Ok so make it in simple English and make it accessible to our people and those Citizens' Assemblies I strongly believe in that because as part of the Living Wage movement and what we're doing and that's how we engage with our people and to me that's the way to go and if we're serious about making sure that the people in our community are having their say in the grassroots then let's go to them and make sure that they are engaged right and centre of the discussion and for their input as well and so that's very important. And once again thank you very much for making time I know that you would rather be with your whānau today, go to the park and do whatever you have to do, but from the Pacific Women's Watch group we really appreciate you making time today to be here with us and our people from our communities as well so let's continue to work together to make a difference. [Applause] So what I have got here is something for - oh did you want to say something?

[Sir Geoffrey Palmer](#)

I just want to say thank you so much for coming thank you for being kind and attentive, and thank you for being interested in this subject because it is important and we are very grateful that you organised this and it has been conducted in a wonderfully professional fashion and we should thank Tim Watkin for that too. And the panel was learned, diverse and excellent!

[Fala](#)

Kia ora! [Applause] So let's go from the end and work our way here - this way. Andrew, Sir Geoffrey Palmer, Dr Huhana, my sister here, always good to see you. Gabriella, our future is in good hands with young people like you but we need more young people to be part of this, and my pacifica brother, malo.  
[Ends]

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Transcriber's notes are marked in square brackets [] and are limited to noting laughter, applause, comments from the audience, noting to whom a comment is made, places where remarks are unclear or items marked as [sic] where it appears that an error has been made.

Some minor hesitations and repetitions in the audio have been omitted in the written format to assist with understanding.

Capitalisation has been used for references to the Treaty of Waitangi, Treaty and te Titiri to distinguish from international treaties.



# Towards Democratic Renewal: Ideas for constitutional change in New Zealand

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In 2016, Sir Geoffrey Palmer and Andrew Butler proposed and published a written, codified constitution for Aotearoa New Zealand. Since then the authors have travelled the country, discussing with the public the nature of New Zealand's identity and where the country is headed. After considering their conversations and formal submissions, this second book - with its revised proposal for a codified constitution - is the product of a year in development.

*Towards Democratic Renewal* reinforces Palmer and Butler's argument for a robust and democratic framework that will safeguard our political system against future challenges, from climate change to earthquakes, 'post-truth' politics and surveillance. This clear, revised constitution defines and entrenches government accountability and transparency, protects the rights of our peoples and tangata whenua, and offers transformative steps to uphold the sovereignty and integrity of Aotearoa New Zealand.

## CONTENTS

- 1 Why a constitution is important
- 2 Our constitutional vision
- 3 What the public told us
- 4 A Constitution based on principle
- 5 The State and a New Zealand republic
- 6 The Government
- 7 Local government
- 8 The Parliament
- 9 Why New Zealand does not need an upper house
- 10 The Judiciary
- 11 Integrity and transparency
- 12 Bill of Rights
- 13 The Treaty of Waitangi and the constitution
- 14 More people need to know how government works
- 15 Elections are not enough
- 16 Deepening citizen engagement
- 17 The media, information and communication
- 18 How to build a new constitution
- 19 Constitution Aotearoa in English and te reo Māori

Cover design by Spencer Levine

# A Constitution for Aotearoa New Zealand

We propose a written, codified Constitution for New Zealand. That Constitution aims to set out in an accessible form and a single document the fundamental rules and principles under which New Zealand is to be governed. It defines the powers of the basic institutions of government and the rights of individuals. It deals not with individual elements of the constitution in isolation, but sets out the constitutional world as a coherent whole.

Constitution Aotearoa identifies the bedrock principles by which public power is to be exercised in New Zealand . . .

Geoffrey Palmer  
& Andrew Butler

GEOFFREY PALMER & ANDREW BUTLER

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256 pages

New Zealand needs a constitution that is easy to understand, reflects our shared identity and nationhood, protects rights and liberties, and prevents governments from abusing power.

The current constitution is vague, jumbled and unclear. It can be easily overridden or changed according to political whim. This book aims to change that. It proposes a modern, codified constitution that is accessible and clear, and it aims to stimulate debate about who we are as a nation and how we should be governed – so we can forge enduring arrangements now, instead of waiting for a crisis to force our hand.

While *A Constitution for Aotearoa New Zealand* proposes some important changes, it is at pains to preserve the sound elements of our past and our unique constitutional culture. The authors conclude by seeking your feedback on their proposals, which will be reflected in a second edition to be published in 2017.

Ultimately this book is an impassioned plea for government to be transparent, accountable, responsive, and reflect the values of all New Zealanders.

**Rt Hon Sir Geoffrey Palmer QC** is a Wellington barrister. He was a law professor before entering New Zealand politics as the MP for Christchurch Central in 1979. In Parliament he held the offices of Attorney-General, Minister of Justice, Leader of the House, Minister for the Environment, Deputy Prime Minister and Prime Minister. Since leaving politics in 1990 he has been a law professor, a law firm partner, president of the Law Commission, chair of the Legislation Advisory Committee, New Zealand's Commissioner to the International Whaling Commission, and chair of the Panel of Inquiry on the 31 May 2010 Flotilla Incident for the United Nations. He is a Distinguished Fellow at the Faculty of Law Victoria University of Wellington and a Global Affiliated Professor of Law at the University of Iowa.

**Dr Andrew Butler** is a litigator at Russell McVeagh, Wellington. He has extensive experience at trial and appellate level, in both public and commercial law, much of it high profile. He has been an academic lawyer at the Victoria University of Wellington, where he taught comparative constitutional law and human rights law among other subjects. He later became a member of the Crown Law Office. He has published on a range of commercial and public law issues.

*“A constitution is a human habitation. Like a city, it may preserve its life and its beauty through centuries of change. It may, on the other hand, become either a glorious ruin from which life has departed, or a dilapidated slum that no longer knows the great tradition of its builders. “*

—Professor Robert Quentin-Baxter, 1981<sup>1</sup>

#### The proposal in a nutshell

We propose a written, codified Constitution for New Zealand. That Constitution aims to set out in an accessible form and a single document the fundamental rules and principles under which New Zealand is to be governed. It defines the powers of the basic institutions of government and the rights of individuals. It deals not with individual elements of the constitution in isolation, but sets out the constitutional world as a coherent whole.

Constitution Aotearoa identifies the bedrock principles by which public power is to be exercised in New Zealand. It sets out and protects the basic institutions of the State. The State has great powers to force people to do things. How that power is ordered, distributed and used is of vital concern to everyone who lives here.

While Constitution Aotearoa makes some important changes, it is at pains to preserve the sound elements of our past and our unique constitutional culture. Constitution Aotearoa anchors the core branches of government: parliamentary, executive and judicial. It formally recognises and sets out the rules around cabinet government. It affirms the central importance of free, fair and democratic elections. It guarantees the fundamental civil and political rights, already long recognised in our constitutional tradition. It preserves and enhances the rule of law and the position of the Treaty. At the same time, however, it acknowledges that change is a significant feature of our constitutional history. It provides, therefore, mechanisms for ongoing 10-yearly reviews of the Constitution and, importantly, enables the Constitution to be amended by Parliament where there is broad cross-party support, or by a referendum of the people.

#### Process

Changing a nation's constitution is no easy endeavour. There is a journey to be travelled and there will be sharp disagreements. Our Constitution requires majority support in a referendum of the people in order to confer democratic legitimacy upon it. It is the people of New Zealand who are the true owners of the Constitution and it is they who are to be protected by it. We seek to engage the public and so we have set out the proposals in as simple and clear a manner as we can, shorn of technical points and excessive details.

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We propose a written, codified Constitution for New Zealand. That Constitution aims to set out in an accessible form and a single document the fundamental rules and principles under which New Zealand is to be governed.

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We have discussed this draft Constitution with a number of experts in New Zealand and the United Kingdom. Although we have both spoken at numerous public meetings in New Zealand, we have not yet had the opportunity to discuss our ideas with the public at large. As a result, some of our proposals may not find ready public acceptance, or we may have missed something that the public wants included.

Constitution Aotearoa must be the people's Constitution. So, interested people should be able to tell us what they think of what we have drafted. We want to share our ideas and get feedback on them by providing the opportunity for interested people to make their views known to us. We can then make revisions in light of those comments. Comments and suggestions can be made up to a year after the publication of the first draft—that is, up until 30 September 2017. Then we shall prepare and publish a final proposal in light of the comments received. We shall at that time also express our views on what should happen next.

#### What is a constitution?

New Zealand has a constitution. But it is neither well known, nor well understood.

A constitution is “[t]he system or body of fundamental principles according to which a nation, state, or body politic is constituted and governed”.<sup>2</sup> Typically a constitution sets out:

- How government institutions are structured and governed:
- What powers the government has and defines the limits on <sup>[L]</sup><sub>[SEP]</sub>the exercise of those powers:
- How government institutions interact with one another and <sup>[L]</sup><sub>[SEP]</sub>how they relate to the public:

Most constitutions also contain protections for fundamental <sup>[L]</sup><sub>[SEP]</sub>human rights and protections for individuals against the possibility of the arbitrary or wrongful use of governmental power. <sup>[L]</sup><sub>[SEP]</sub>British political scientists put it well when they said:<sup>3</sup>

*“A written—more properly, a codified—constitution provides a clear, accessible and coherent account of the body of fundamental rules and principles according to which the state and society are constituted and governed. In addition, it defines the powers of the institutions of government and sets out the rights of individuals and their responsibilities.”*



While any constitution comprises words on a page, those who live under it and those who make public decisions give it life and substance.

#### **Where is New Zealand's constitution?**

The current New Zealand constitution consists of a hodgepodge of rules, some legally binding, others not. It is formed by a jumble of statutes, some New Zealand ones and some very old English ones; a plethora of obscure conventions, letters patent and manuals; and a raft of decisions of the courts. There has also been much academic and professional commentary on constitutional practice. Other than parts of the Cabinet Manual, which has no legal status, no attempt has been made to bring the various segments of the Constitution together. An interested person cannot find a clear and coherent statement of the whole framework within which political decisions are made.

In short, accessing the basic material required to understand the current New Zealand constitution is both arduous and frustrating. It is unsurprising then that New Zealanders speak little of their constitution and think about it even less. Indeed, it might seem that the constitution is deliberately kept something of a mystery so people will not bother about it. New Zealand's existing constitution is so widely dispersed as to be a serious problem.<sup>4</sup>

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The State has great powers to force people to do things. How that power is ordered, distributed and used is of vital concern to everyone who lives here.

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Our view on the inaccessibility of the most basic rules of how we govern ourselves is neither new nor idiosyncratic. One of New Zealand's leading historians, Professor JC Beaglehole, warned as far back as 1944 of the New Zealand constitution being "some silk-wrapped mystery, laid in an Ark of the Covenant round which alone the sleepless priests of the Crown Law Office tread with superstitious awe".<sup>5</sup> Fast-forward 70 years and that concern remains valid. Two recent official inquiries—one by a parliamentary select committee chaired by the Hon Peter Dunne in 2005 and the other by a Government-appointed panel on constitutional issues in 2013<sup>6</sup>—agreed that New Zealanders do not understand their own constitution.<sup>7</sup> Inaccessibility is a major contributor to that sorry state of affairs.

A constitution is the foundation of law and politics in any country. It should be easy to find, so that people know the basic rules by which they are governed and public power is regulated. New Zealand is one of the few countries in the world where a citizen cannot go to a single source of those rules. In the modern age it is frankly shocking this is so. There are only two other countries in the world that have constitutions as fragmented, unorganised and uncoded as we have.<sup>8</sup> This alone suggests that putting all the rules in one place is the minimum that needs to happen. As matters now stand it is not clear what is "constitutional" and what is not.

The most fundamental aim of this project is to state the Constitution in one place so that it is certain and accessible for everyone. The unfilled spaces in our constitution need to be coloured in. People should be able to know and see the rules that govern those carrying out public duties. People should know what their fundamental rights are and how to enforce them. A single basic law, accessible to all, allows that to occur. In this regard we echo the words of Professor Robert Blackburn of King's College, London, who has been of great assistance to us in this project:<sup>9</sup>

*“The primary argument for a written constitution is that it would enable everyone to know and see what the rules and institutions were that governed and directed ministers, parliamentarians, civil servants, and all senior state officials and public office holders, in performing their public duties.”*

It is long since past time that we make our constitution clear and accessible. That need is now compelling in contemporary New Zealand. The ethnic and cultural compositions of the people who live here are fundamentally different from what they were 50 years ago. They will change further in the future. Nowadays so many of us who call New Zealand home were born and bred overseas in very different constitutional systems. It is only right that we make our system known and knowable.

While New Zealand is exceptionally unusual compared with other nations in that it does not have a written codified constitution, many New Zealanders probably feel they have more pressing matters with which to be concerned. No public clamour exists for such a development. We aim to persuade people that while New Zealand is a successful country, it would be more successful and better governed if there was constitutional change. Our proposal is not meant as a simple restatement of our constitutional framework as it is now. This is also an aspirational and reformist project. The changes we have put forward in Constitution Aotearoa we believe are a necessary part of preserving democratic freedom in New Zealand and protecting the fundamental principles which anchor public power and strengthen government accountability.

New Zealanders are practical people; they prefer to work with the concrete, not with the abstract. The desultory nature of New Zealand's constitutional dialogue on change is caused in part, we believe, by the lack of any specific proposal with which to engage.<sup>10</sup> That is why we have constructed a proposed Constitution for New Zealand, Constitution Aotearoa.

Many nations change their constitutions only after a constitutional moment, such as a revolution. New Zealand has suffered the upheavals of the New Zealand wars, two world wars and other conflicts. We had something approaching a constitutional crisis in 1984 over the inability to swear in a new government immediately after a general election. Yet our Constitution has tended to meander oblivious to events around it. It was never forged under the blowtorch of political emergency. New Zealand has not had any such defining event. We do not need to wait for such an event. A time of relative harmony is a good time to have the debate. New Zealanders did a good deal of thinking about who they are in the course of the recent flag debate. We believe that debate showed there was an appetite for discussion and movement on the constitution. A constitution goes to the heart of the matter about who we are and what we believe in.

## The existing constitution is too flexible

Accessibility is not the only problem with our current arrangements. New Zealand's present constitution is dangerously incomplete, obscure, fragmentary and far too flexible. It remorselessly evolves with political developments and is subject to few limits. It evolves in obscure and unpredictable ways that are not transparent. That is the trouble with such a political constitution. Our constitution is not fully fit for purpose in the political and social realities of modern New Zealand. That needs to change. New Zealand needs a constitution fit for the modern age.

Unlike almost all other countries, nearly all of New Zealand's constitutional rules can be altered easily. That is because:

- In New Zealand a simple majority of MPs in Parliament has the power to make, repeal or amend almost any law that it pleases, including any constitutional law.<sup>11</sup> Unlike the position in most other representative and participatory democracies like ours, New Zealand judges cannot invalidate any such law on the ground that it is unconstitutional.
- We have a unicameral Parliament, in that our Parliament consists of one house only, the House of Representatives. This means laws can be made at great speed as there is no second House to act as a check. There is no requirement at all for Government to consult with anyone before bringing a Bill before Parliament, and it can use numbers in the House to prevent the Bill, once introduced, from being sent out for public submissions. In short, all of the usual legislative practices can be, and are, overridden where it suits the Government of the day.

So, incredible as it may sound, it would be legally possible for our Parliament to repeal the Constitution Act 1986 or the New Zealand Bill of Rights Act 1990 in a single sitting day of the House under urgency, without any public input.

New Zealand's present constitution is dangerously incomplete, obscure, fragmentary and far too flexible.

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This is not scaremongering; actions like it have happened. For example, in 2013 Parliament enacted the New Zealand Public Health and Disability Amendment Act in a single sitting day. Its principal effects were first to prevent anyone ever making a complaint to the Human Rights Commission or bringing a court proceeding against any Government family carer policy no matter how discriminatory, and second, to exclude retrospectively the provision of remedies for past discrimination. It followed a decision of the Court of Appeal that had upheld the human rights of some of the most vulnerable people in our community—the disabled and family members who cared for them. There was no warning that the Bill was to be introduced; there was no public consultation on it; there was no Select Committee consideration of it. By any measure, it was a shocking piece of legislation that ousted well-known constitutional protections and removed New Zealand citizens' rights to be free from discrimination in certain cases.

Yet it passed in a single sitting day despite almost immediate public outcry. Only another Act of Parliament can alter or remove it. That is how fragile our constitutional system currently is.

In our view, occurrences like this are simply unacceptable. If well-known and accepted constitutional protections are to be departed from then that should only occur when the people can be persuaded to allow for that, or when there is overwhelming parliamentary support for it.

#### **The rule of law**

Government should be conducted under the law. And the rule of law needs to be strengthened in New Zealand. That law should apply to everyone, including Parliament. The rule of law is a bedrock principle. The celebrated English judge Lord Bingham said, “the law must be accessible and so far as possible intelligible, clear, and predictable”.<sup>12</sup> That means every person and the authority within the state, whether public or private, should be bound by and entitled to the benefits of laws publicly made, which take effect generally in the future and are publicly administered by the courts. Legislation comprises the backbone of the rule of law. The rule of law has another feature:<sup>13</sup>

*“law must, to some extent, be independent: independent of those that make the law, independent of those who apply it, independent of those to whom it is applied, and independent of the time at which it is applied.”*

The 19th-century notion that Parliament should be able to change any law it likes at speed with a small majority at any time has had its day. People have rights and they should be provided in a constitution that is superior law and binds Parliament. Such a step will enhance the rule of law and ensure that when the law is changed proper process is observed.

Unless most provisions of a constitution can be enforced in the courts, its features are mere window-dressing and a type of public relations programme intended to make people feel good, rather than a document that confers real rights and protections on the people. This is not to say that Cabinet should not govern, nor that Parliament should not make laws. It is just that some modest limits should be placed on those great powers. Parliamentary sovereignty needs to yield to popular sovereignty and participatory democracy.

#### **The essential role of politics**

We do not seek to undervalue the role of elected Members of Parliament. Indeed, we think political skills are essential to the running of a representative democracy. And while people grumble about politicians and freely criticise governments, the adjustment of disputes and settling of policy directions must be done by the elected representatives of the people who have political skills. But if past experience is anything to go by, our elected MPs will not give up any power or accept any restrictions upon its use unless the public demands it.

Our hope and expectation is that the new Constitution has the capacity to restore some trust and confidence in politics and politicians, a loss of which is afflicting many western governments. The internet provides new opportunities for public engagement in the political process and in forging new attitudes to it. It allows more people to look at suggestions, make their views known, and share their opinions with others.

We are not seeking to settle the big and perennial questions of public policy such as when the market is the best solution to satisfying a need and when regulation is required or how big or small the state itself should be. These issues have to be settled through public debate and the electoral success of political parties. Political choices, not the Constitution, should determine the nature of the political economy of New Zealand.

The scope and limits within which political decisions are made need to be laid down so that everyone knows what the rules are: the public, the public servants and officers of state, the judges, the MPs and ministers. When it comes to the great powers of the State we all need to be singing from the same song book.

#### **A firmer constitutional foundation**

Constitution Aotearoa proposes the adoption of a superior law constitution with a system of checks and balances such as that found in almost all overseas participatory democracies. Among the checks and balances are:

- entrenchment of the Constitution, so it cannot be amended on the whim of a bare parliamentary majority, as is currently the case:
- the recognition of an enhanced ability of the courts to enforce the Constitution, including by striking down Acts of Parliament that are inconsistent with it. This is a power exercised by almost all courts in overseas participatory democracies, including Australia, Canada, Ireland, South Africa, the United States, almost all Commonwealth countries, most countries in continental Europe and many Asian nations. (Note, however, that Australia lacks a Bill of Rights in its Constitution, a point that must have become evident to New Zealanders as a result of the recent spate of deportations of New Zealanders living in Australia back to New Zealand.)

While we do not propose the reinstatement of a second house within the legislature, we do propose that the House of Representatives be elected for a fixed four-year term, not the current term of up to three years. Better legislation should result from a longer parliamentary term, as governments will not need to push it through in a rushed and hurried way as they do at present. Moving to a fixed term allows the uncertain reserve powers of the Governor-General to be abolished.<sup>14</sup>

The constitutional status of te Tiriti of Waitangi/the Treaty of Waitangi—already recognised in numerous statutes and court decisions—will be explicit and put on a secure footing to reflect actual practice.

The existing Bill of Rights<sup>15</sup> will be strengthened by its inclusion in an entrenched Constitution, as well as the addition of a number of extra rights, including the right to



education and the right to property. There will also be constitutional protection for the environment.

### **New Head of State**

We are proposing a new Head of State, a New Zealander who lives here, in the place of the Queen reigning over New Zealand. The new Head of State would be called “the Head of State”. The person would be selected on a free vote in the House of Representatives. The Head of State would enjoy very similar, although not identical, powers and functions to those exercised by the Governor-General now. The term of office would be five years. New Zealand would remain in the Commonwealth. New Zealand has secured many advantages from its British connections over the years and these can be maintained, but we need now a more defined sense of our own national identity as an independent nation in the area of the world in which we live.

Again, there is nothing radical in our proposals on this issue. For some time now senior politicians, including at least four recent prime ministers, have said that abolition of the monarchy is inevitable and editorials have called for a home-grown Head of State once the Queen dies (see chapter three).

### **Judges and the Constitution**

That most famous of French constitutional analysts Montesquieu warned that there would be “no liberty if the judiciary power be not separated from the legislative and executive”.<sup>16</sup> An independent Judiciary is an essential requirement in the preservation of liberty and no democracy can be without one. It is the judges who say how the laws that have been enacted should be applied in individual cases. The separation outlined by Montesquieu constitutes a fundamental principle of how power in New Zealand is organised, a doctrine known as separation of powers.

Judges only have the power of making judgments according to law. They are not invested with anything comparable to the resources and powers of the other branches of government. They can be described as the weakest and least dangerous branch of government. The courts can, however, in constitutional terms function as a useful safeguard of the liberties of the people. It needs to be remembered, however, that judges in New Zealand do not initiate or even choose which disputes go to court. They simply deal with whatever issues are taken to the courts by New Zealanders.

We propose that the Constitution should be a higher law enforceable by the courts. This is probably the most significant change we propose, at least in legal terms. Some will say that such a change will give our courts too much power and will turn our Supreme Court into something like the Supreme Court of the United States.

There are several reasons why this is not the case. The most important reason why our proposal cannot be compared to the United States’ position is that Constitution Aotearoa preserves the power of Parliament to have the final say.<sup>17</sup> Respecting the long tradition of parliamentary sovereignty in New Zealand, under which it is said that Parliament can pass any law it likes, we preserve that situation if a significant proportion of the MPs are in agreement. Under Constitution Aotearoa, Parliament

would be able to decide by a 75 per cent majority to change the Constitution, or to continue to enforce an Act of Parliament that the courts have declared invalid under the Constitution. Such an approach will allow the House to override a constitutional decision of the Supreme Court of New Zealand. We hope this will not occur often. Making big constitutional changes with a bare majority in the House of Representatives should not be permitted, but when there is a significant parliamentary majority against a court decision, the safeguard needs to be there. Parliament, as an elected body, should have the final word. The majority must rule, but on constitutional issues that are more important and have greater consequences than ordinary legislation, the overruling should be done only by a special majority. And ultimately that special majority will be accountable to the people.

The existing operation of the doctrine of parliamentary sovereignty in New Zealand acts to protect the Parliament, Cabinet decision-makers and legislation from the possible limitations imposed by the Bill of Rights. As former Speaker of the House of Representatives Margaret Wilson has written, the doctrine “constrains the scrutiny of legislation by the courts”.<sup>18</sup> It encourages ministers to fashion constitutional propriety for their own convenience of the political moment. To say that they do this in the name of democracy is politically naïve and neglects to explore the methods of how political decisions are made and enacted. In substance what we have is sovereignty of the executive government.

Governments act to remain in power as long as they can and they tend to try to get away with whatever they can while they’re there. A government has the capacity to command resources and influence situations and outcomes to the point where it is not so much the public interest that the executive in the name of the Crown is representing, as the Government’s own political interest. So softening the operation of parliamentary sovereignty, rendering it less absolute but not eliminating it, will blunt the harder edges of executive power in New Zealand. And the rule of law will be further promoted by such a change.

#### **Popular support: tradition and change**

Constitution Aotearoa aims to accomplish two objectives: a constitution must rest on a popular foundation, and facilitate the principle that majorities must have their will expressed in legislation. A constitution must prevent abuses of power, tyranny over minorities by majorities, and invasion of human rights norms. We have not here written on tablets of stone designed to be immutable for the future. What we seek is a working framework for the exercise of public power in New Zealand on a clear and principled basis. Constitution Aotearoa therefore acknowledges that accommodating change will be a significant feature of our ongoing constitutional history, and provides mechanisms by which that change can be achieved.

We are keen to ensure that constitutional change has popular support. In the past it has simply been too easy for constitutional change to occur based on the politics of the moment supported by bare majorities. But at the same time, we recognise that unlike in other countries where constitutional change is too hard (for example Australia and the United States), we should not be shackled to the past. Change will be a significant

feature of our ongoing constitutional history and where changes are needed they should be capable of being made where there is popular consensus.

Constitution Aotearoa reflects and builds upon an unbroken tradition and constitutional practice that has existed in New Zealand since 1956. Since then vital provisions of the electoral system, such as the secret ballot, have required the support of 75 per cent of the House, or a referendum of the people, to change them. The MMP electoral system was introduced by referendum. To change the Constitution will require support of either a 75 per cent majority of MPs or more than 50 per cent in a referendum of the people. In addition, so as to ensure that constitutional discussion remains fresh and deliberative, Constitution Aotearoa provides for ongoing 10-yearly reviews. Any amendments arising out of those reviews would, of course, be required to comply with the normal constitutional amendment rules. The initial adoption of the Constitution must be by referendum in order to secure for it democratic legitimacy.

When a referendum should be held as compared with a 75 per cent majority of the House, this is an issue upon which we suggest no rule. We would expect, however, on major constitutional issues a referendum of the people would be required under an Act of Parliament passed for the purpose. This reflects the 1986 recommendation of the Report of the Royal Commission on the Electoral System. In this we seek a balance between representative democracy and direct deliberative democracy.<sup>19</sup>

#### **Avoiding decay and ensuring success**

Some nations are more successful than others. It has been said that to be successful a nation needs three elements:<sup>20</sup>

- a competent state—which means the administration is efficient and the authority of the state is respected and free of corruption:
- strong rule of law—which means all are subject to and equal before the law, including the law makers and enforcers themselves:
- democratic accountability—that is, accountability of those in power to the people they govern.

Without these fundamental elements underpinning it, a state would not function as it would be administratively inefficient, corrupt and subject to arbitrary and wrongful abuses of government power against the citizens of the state. The codified Constitution put forwards in this book seeks to prevent this from occurring here in New Zealand by ensuring that everyone has free and easy access to the set of rules that set out government power, so that the people can hold Government to account for any breaches of this and uphold the rule of law. It facilitates accountability and competence by strengthening the system of checks and balances or safeguards within the State which keep tabs on different branches of government and protect the interests and rights of the people.

A constitution must stand above the interests of any particular political party or political philosophy. It must belong to all of the people because it is under their will that

government is conducted in a democracy. They are the ultimate authority, not the Parliament.

#### **National identity, aspiration and preservation**

A constitution should contain some of the aspirations of the nation that it governs. It should tell us something about our sense of national identity. It should contain a confident statement about what we stand for as a nation and allow others to see what those values are.

New Zealanders have not always been as indifferent to their constitutional arrangements as they have been over the last 30 years. Early in our history, before the 1852 New Zealand Constitution Act was passed in London, there was great agitation among the settlers to have a say in their own government and to remove what they saw as the yoke of undemocratic control by the Governor.

Our proposal preserves the valuable features of our constitutional heritage, which has a long history and highly respectable pedigree. These days many New Zealanders do not know what our constitution is or what is in it and that is hardly surprising because they cannot find it anywhere. So their eyes glaze over when there is constitutional talk. There is insufficient interest in the machinery of government and a low level of civic awareness in New Zealand. Apathy about these issues could easily result in the whittling away of people's rights and the abuse of public power.

So, with what clarity and elegance we can muster, we have set out for the first time in one place the organisation of the New Zealand State and an indication of the locations of public power: who has it, how it can be used and what limits exist upon it.

Rather than have a constitution that is "bestowed upon us by Providence" as Mr Podsnap puts it in Charles Dickens's novel *Our Mutual Friend*, we think it better to adopt an approach that sets out clearly the rules concerning governmental authority. We set out the structures and institutions of government. We try to state the principles and machinery by which government runs in New Zealand. The primary institutions are protected by the Constitution we propose. So is the security of citizens in not having fundamental protections casually cast away.

We want to nail down the powers and limitations of government and the divisions of power between Parliament, the Government and the courts. Further, we recognise that the Constitution is different from ordinary laws and should not be capable of being changed as easily as other laws. Constitutional changes should require a special majority in the House of Representatives or a referendum of the people.

#### **Summary of what we hope to achieve with Constitution Aotearoa**

##### *1 Accessibility and certainty:*

Set out the rules, principles and processes about government in one document so they are accessible, available and clear. Eliminate the need for significant unwritten constitutional conventions and customs which are unclear in important respects. Our

Constitution will remove the mystery and provide an accurate map about how we govern ourselves.

## *2 Education:*

Provide a Constitution that will educate people and public decision-makers on their rights and responsibilities. A new Constitution should help people participate in democratic decision-making and provide a better framework for learning about civics. This will help people not born here to understand New Zealand's system of government, and that is a significant need given the increasing ethnic and cultural diversity of New Zealand society. Such a Constitution may help to dispel the disenchantment with politics that seems to afflict us. The Constitution must be trusted by the people.

## *3 Rule of law:*

Anchor public power in a Constitution that will contribute to the rule of law, a concept that is fundamental to a well-functioning representative democracy. Government that is beyond the law resembles tyranny. The courts in New Zealand can be relied upon to be fair and follow legal propriety. All must be equal in the eyes of the law. The Constitution embodies principles of legality and fair procedure. An important element of the rule of law is judicial independence and impartiality on the part of judges in supervising the legality of government and promoting the freedom of its citizens.

## *4 Democratic accountability:*

Provide clear means of holding public decision-makers accountable to the public whom they serve on a continuing basis, whether they be ministers, politicians, public servants, the police, the defence forces or the Judiciary. Elections are but one form of accountability. The features of accountability can vary from one government institution to another, depending on the subject matter and particular issues. One form of accountability does not fit all situations.

## *5 Transparency:*

Make decision-making and law-making more transparent so that the public is better able to make judgments about the policies being carried out, and for the same reason, improve the availability of official information.

## *6 Protection for the rights of citizens:*

Ensure that the New Zealand Bill of Rights and te Tiriti o Waitangi / the Treaty of Waitangi are better observed.

## *7 A New Zealander as Head of State:*

Establish the functions and powers of a New Zealand Head of State.



*8 National identity and the preservation of the elements of the system that have served New Zealand well:*

Record important elements of New Zealand's national identity and protect basic institutions that are required to serve the public. Provide for development in the future.

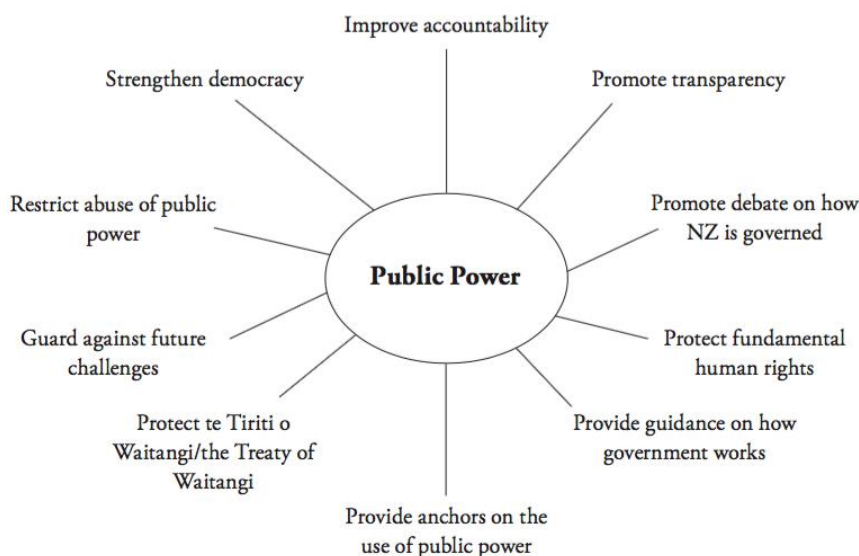
*9 Protections against the abuse of power:*

Restrict and control the arbitrary use of government power by the provision of ample safeguards against wrongful use of that power.

*10 The Constitution belongs to the people:*

A constitution must stand above the interests of any particular political party. It must belong to all the people because it is under their will that government must be conducted in a democracy. The aphorism penned by the greatest of American presidents, Abraham Lincoln, in the Gettysburg Address expresses our aim here: "that government of the people, by the people, for the people, shall not perish from the earth".

#### **Purposes of the proposed Constitution**



## **Notes**

1. R G Quentin-Baxter "The Governor-General's Constitutional Discretions: An Essay Towards a Redefiniion" (1980) 10 VUWLR 289 at 290.

2. *The Shorter Oxford English Dictionary* (3rd ed, Clarendon Press, Oxford, 1959) at 378.

3. Vernon Bogdanor, Tarunabh Khaitan and Stefan Vogenaver "Should Britain Have a Written Constitution?" (2007) 78(4) The Political Quarterly 499 at 499. [↗](#)
4. Matthew Palmer "What is New Zealand's constitution and who interprets it? Constitutional realism and the importance of public office-holders" (2006) 17 PLR 133 at 142–145. He found the New Zealand constitution to be located in 45 Acts of Parliament, including six passed in England, 12 international treaties, nine areas of common law, eight constitutional conventions, three-and-a-half executive instruments, one prerogative instrument, one legislative instrument and half a judicial instrument. [↗](#)
5. JC Beaglehole New Zealand and the Statute of Westminster (Victoria University College, Wellington, 1944) at 50. [↗](#)
6. Constitutional Arrangements Committee *Inquiry to review New Zealand's existing constitutional arrangements* (10 August 2005); Constitutional Advisory Panel *New Zealand's Constitution: A Report on a Conversation* (November 2013). Two private attempts have also been made to discuss and conceptualise some of the issues facing our constitutional system, see Colin James (ed) *Building the Constitution* (Victoria University of Wellington Institute of Policy Studies, Wellington, 2000); and Caroline Morris, Jonathan Boston and Petra Butler (eds) *Reconstituting the Constitution* (Springer, London, 2011). See also Mai Chen *Public Law Toolbox: solving problems with government* (LexisNexis NZ, Wellington, 2014) at chapter 28 for a discussion of the prospects for change. [↗](#)
7. Constitutional Advisory Panel, above n 6, at [9]. [↗](#)
8. The United Kingdom and Israel. [↗](#)
9. Robert Blackburn "Enacting a Written Constitution for the United Kingdom" (2015) 36(1) Stat L R 1 at 3. [↗](#)
10. There have been several attempts made in the last 20 years to examine New Zealand's constitution, see the references in note six. None of these efforts have produced change of any sort as far as we can tell. Official reports agree on one thing however: New Zealanders do not understand the New Zealand constitution, or their own rights under it. To combat this, a national strategy for civics education was proposed, but little appears to have been done to implement it. [↗](#)
11. With the exception of six provisions of the Electoral Act 1993, set out in section 268. [↗](#)
12. Tom Bingham *The Rule of Law* (Allen Lane, London, 2010) at 37. [↗](#)
13. Matthew Palmer "New Zealand Constitutional Culture" (2007) 22 NZULR 565 at 587. [↗](#)
14. These are described as the personal prerogatives of the monarch in the United Kingdom and their importance is not great. Interventions by the monarch in political affairs belong to a by-gone era: Robert Blackburn "Monarchy and the Personal Prerogatives" [2004] Public Law 546. [↗](#)
15. New Zealand Bill of Rights Act 1990. [↗](#)
16. Baron Charles de Montesquieu *The Spirit of the Laws* (France, originally published in French in 1748) Bk. XI Ch. 6. [↗](#)
17. Under the United States Constitution, there is no power for the United States Congress to override a decision of the United States Supreme Court. Rather, any constitutional amendment seeking to override a Supreme Court decision must have the support of not only Congress but also three-quarters of the 50 individual States. Getting support from all of these constitutional actors in the United States is notoriously hard to achieve and explains why so few amendments have been made to the United States Constitution in over 225 years. As a result of the difficulty of amendment, effectively the United States Supreme Court has the last word on virtually all constitutional issues. Such a scenario would not arise under Constitution Aotearoa, since the Constitution could be amended by special parliamentary majority or by referendum. [↗](#)
18. Margaret Wilson *The Struggle for Sovereignty: New Zealand and Twenty-First Century Statehood* (Bridget Williams Books Ltd, Wellington, 2015) at 50. [↗](#)
19. Stephen Tierney *Constitutional Referendums: The Theory and Practice of Republican Deliberation* (Oxford University Press, Oxford, 2014). [↗](#)
20. Francis Fukuyama *Political Order and Political Decay: from the Industrial Revolution to the Globalisation of Democracy* (Faras Straus and Giroux, New York, 2014). [↗](#)

# The proposed Constitution of Aotearoa New Zealand

- [Preamble](#)
- [Part 1 Supremacy of the Constitution](#)
- [Part 2 The State](#)
- [Part 3 The Head of State](#)
- [Part 4 The Government](#)
- [Part 5 The Parliament and Legislature](#)
- [Part 6 Law-making](#)
- [Part 7 Finance and Taxation](#)
- [Part 8 The Judiciary](#)
- [Part 9 International Relations](#)
- [Part 10 Defence and Security](#)
- [Part 11 Te Tiriti o Waitangi / the Treaty of Waitangi](#)
- [Part 12 The Bill of Rights](#)
- [Part 13 Other State Institutions](#)
- [Part 14 Integrity and Transparency](#)
- [Part 15 Commencement and Amendment](#)
- [Part 16 Emergencies](#)
- [Part 17 Transitional Provisions](#)
- [Appendix to the Constitution](#)

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## *Preamble*

We the people of Aotearoa New Zealand:

*Express* our desire to build upon our rich constitutional culture and heritage that includes the Magna Carta 1215, the Petition of Right 1628, the Bill of Rights 1688, protection against unlawful detention by writs of Habeas Corpus, representative and responsible government, commitment to the rule of law and an independent Judiciary, the Declaration of Independence 1835, te Tiriti o Waitangi / the Treaty of Waitangi 1840, long-standing democratic traditions with free elections based on universal suffrage, respect for persons from diverse cultures, the dignity and worth of each individual human person, a commitment to the upholding of civil, political and human rights, the striving to secure cultural, economic and social rights, the promotion of transparency and openness in government decision-making and accountability of decision-makers:

*Declare* the time has come to strengthen and deepen the constitution by the adoption of a codified, written Constitution of Aotearoa New Zealand which recognises that we live together as a diverse community, in a proud and independent nation with our own voice within the community of nations, and an open society based upon the values of a robust and transparent system of democratic government under law:

*State* that the values of our society are based on freedom and opportunity; on human dignity and tolerance; on kaitiakitanga and sustainability; on mana and tikanga Māori; on a sound economy; on fairness and equality; on a strong sense of community, human compassion and the family, especially the care of children; on the responsible use of authority; and upon democracy:

*Affirm* that in the pursuit of the peace, order and good government of the State, the Constitution of Aotearoa New Zealand is founded on the following six principles:

(a) a recognition that the people govern themselves through a democratic system of representative and responsible government based on free and fair elections, with a clear distribution of public powers between the Head of State, the Parliament, the Government and an independent Judiciary:

(b) a commitment to the principle of transparency, on the basis of publicly available information, so that the people may participate in decision-making as far as practicable:

(c) the rule of law with affordable access to the machinery of justice through the courts and tribunals so that people are treated equally before the law and receive justice according to law in a fair and equitable manner:

(d) respect for te Tiriti o Waitangi/the Treaty of Waitangi, which is recognised as the founding document of the nation, and constitutional recognition of the rights, privileges and obligations on and of the State and Māori, and for Māori their interests and customs as the tangata whenua:

(e) the protection of fundamental human rights and liberties against encroachment by the Parliament, the Government and the Judiciary without discrimination on the basis of race, gender, sexual orientation or any other prohibited ground of discrimination recognised by New Zealand law:

(f) respect for the international rule of law, peace, the principles of the United Nations Charter and the rights and dignity of all peoples.

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[Back to top](#)

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## ***Part 1 The Supremacy of the Constitution***

### **1 Constitution is supreme**

Where there is an inconsistency between any law and any provision of this Constitution, the provision of this Constitution prevails.

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## ***Part 2 The State***

### **2 The State and nation of Aotearoa New Zealand**

(1) The nation known as New Zealand in the English language or Aotearoa in te reo Māori is referred to in this Constitution by the composite name of Aotearoa New Zealand.

(2) Aotearoa New Zealand is an independent, democratic state that functions under the rule of law and is committed to the task of building a successful nation.

(3) The State of Aotearoa New Zealand (in this Constitution referred to as “the State”) is a legal entity with a legal personality and has the rights, powers and capacities of a natural person of full age and capacity.

(4) The rights, powers and capacities of the State that flow from the legal personality of the State conferred by paragraph (3) may be exercised only for the purpose of doing anything that is required for, or that is incidental to, or consequential, on the performance of a function conferred by law on the Government.

(5) The exact boundaries of the State territory are determined from time to time by or under Act of Parliament.

### **3 Source and exercise of governmental powers**

(1) All powers of government vested in the State, legislative, executive and judicial, derive from the people of Aotearoa New Zealand.

(2) The State is bound by this Constitution and the law for the time being in force, except to the extent it is inconsistent with this Constitution.

(3) The powers of the State may be exercised only by or on the authority of an institution of State established or recognised by this Constitution or by or under an Act of Parliament.

#### **4 Assets and liabilities of Crown in right of New Zealand vest in the State**

(1) On the commencement of this Constitution, all assets of the Crown in right of New Zealand vest in the State as the successor of the Crown in right of New Zealand.

(2) Paragraph (1) affects the land law doctrines of tenures and estates only to the extent that the State takes the place of the Crown for the purpose of the continued application of those doctrines.

(3) On the commencement of this Constitution, all liabilities of the Crown in right of New Zealand are assumed by the State as the successor of the Crown in right of New Zealand.

(4) In paragraph (1), “assets” includes— (a) natural resources, land, minerals, and other resources: (b) rights under any agreement or law: (c) personal property and money.

(5) In paragraph (3), “liabilities” includes— (a) obligations under any agreement or law: (b) contingent liabilities.

#### **5 Citizenship**

(1) Nothing in this Constitution prevents a citizen of the State from also being a citizen of another state.

(2) An Act of Parliament determines the acquisition, loss and restoration of citizenship.

(3) Nothing in this Constitution prevents citizens of the Cook Islands or Niue from holding Aotearoa New Zealand citizenship.

#### **6 The symbols of the State**

There may be symbols of the State. Acts of Parliament determine the features of these symbols, unless by Act of Parliament it is decided in a particular instance to determine the issue by a referendum of the electors.

#### **7 The languages of the State**

(1) The official languages of the State are te reo Māori, English and New Zealand Sign Language.

(2) Provision may be made from time to time by Act of Parliament for the use of any official languages for any one or more official purposes.



## **8 The Commonwealth and the United Nations**

Nothing in this Constitution prevents the State's continued membership of the Commonwealth of Nations or the United Nations.

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### ***Part 3: The Head of State***

## **9 The Head of State**

(1) There is established by this Constitution the office of Head of State of Aotearoa New Zealand.

(2) The Head of State is appointed to office for a fixed single term of five years by the House of Representatives on a free vote, that is to say a personal vote on a conscience issue.

(3) The Head of State must—

(a) be a citizen of Aotearoa New Zealand:

(b) reside within New Zealand while holding the office.

## **10 Functions and arrangements of the Head of State**

(1) The Head of State has only the powers, duties and functions conferred on the office by this Constitution or by Act of Parliament.

(2) The Head of State must—

(a) signify assent to all Bills that, in accordance with this Constitution and the standing orders of the House of Representatives, have passed through all their stages and are presented for signature:

(b) preside at meetings of the Executive Council when present:

(c) on receipt of the report of the Speaker of the House of Representatives, appoint as the Prime Minister the person elected to that office by the House of Representatives and accept the resignation of the Prime Minister when tendered by the Prime Minister:

(d) appoint to, and remove from, the office of minister the persons whose names are submitted by the Prime Minister:

(e) on advice of the Prime Minister, issue writs for parliamentary elections:

(f) on the advice of the Minister of Foreign Affairs, appoint all diplomatic or consular representatives of Aotearoa New Zealand and receive all diplomatic representatives accredited to Aotearoa New Zealand:

(g) on the recommendation of the Prime Minister, confer honours, awards, decorations and distinctions:

(h) act as the titular head of the Armed Forces of the State.

(3) The Head of State must, in performing his or her functions, endeavour to act as a non-partisan symbol of unity of the State and the nation.

(4) The Head of State must never be without ministerial advisers and must exercise all functions, powers and duties other than those conferred by Article 11, on the advice of those ministers.

## **11 Head of State to be kept informed and entitled to advise ministers**

(1) The Prime Minister must keep the Head of State informed on the general conduct of the Government, and must make available to the Head of State information he or she may request with respect to any particular matter relating to the Government of the State.

(2) The Head of State may give advice and comment on affairs of State in private to the Prime Minister and to other ministers.

## **12 Death, resignation or removal of Head of State**

(1) Upon the death, resignation or removal of the Head of State a new Head of State must be appointed for a five-year term.

(2) The Head of State may resign from office, for any reason, by giving notice of resignation to the Prime Minister.

(3) The Head of State may not be removed from office except by an address of the House of Representatives, which address may be moved only on the grounds of misbehaviour or of incapacity to discharge the functions of office.

## **13 Royal powers abolished**

(1) Those powers exercised, before the commencement of this Constitution, by ministers, under the authority of the royal prerogative, are abolished.

(2) On and after the commencement of this Constitution, ministers have only the powers that are expressly, or by necessary implication, conferred on them by this Constitution or by Act of Parliament.

(3) To allow orderly adjustments to be made and statutes to be passed by Parliament, the royal prerogative shall continue for five years after this Constitution comes into force and for that period the prerogative powers may be exercised on the advice of the ministers to the Head of State as if the prerogative powers were powers of the Head of State.

## **14 Administrator of the Government**

In the absence or incapacity of the Head of State or if the office of the Head of State is vacant the Chief Justice of Aotearoa New Zealand acts as administrator of the Government in accordance with an Act of Parliament and exercises the powers and functions of the Head of State. In the absence of the Chief Justice the next most senior judge of the Supreme Court is the Administrator.

## **15 Remuneration**

(1) Remuneration for the Head of State, funding and other payments relating to the office and the programme of the office must be provided for by Act of Parliament.

(2) The salary of a person appointed to the office of Head of State must not be reduced during his or her term of office and no adverse changes may be made in other conditions of service while the Head of State holds office.

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## ***Part 4 The Government***

### **16 Governmental power**

(1) This Article establishes the Government of the State.

(2) The Government has the executive powers of the State that are expressly, or by necessary implication, conferred on it by this Constitution or by Act of Parliament.

(3) The Government comprises—

(a) the Prime Minister;

(b) the other Members of Parliament appointed as ministers of the Government and members of the Executive Council;

(c) the public service.

(4) The Government may act through the Cabinet, a minister or any other officer or entity empowered by or under this Constitution or by or under an Act of Parliament to act on behalf of the Government.

(5) A person may be appointed and may hold office as a member of the Executive Council or as a minister only if that person is a Member of Parliament.

(6) Notwithstanding paragraph (5) of this Article—

(a) a person who is not a Member of Parliament may be appointed and may hold office as a member of the Executive Council or as a minister if that person was a candidate for election at the general election of the House of Representatives held immediately preceding that person's appointment as a member of the Executive Council or as a minister, but shall vacate office at the expiration of the period of 40 days beginning with the date of the appointment unless, within that period, that person becomes a Member of Parliament;

(b) where a person who holds office both as a Member of Parliament and as a member of the Executive Council or as a minister ceases to be a Member of Parliament that person may continue to hold office as a member of the Executive Council or as a minister until the expiration of the 28th day after the day on which that person ceases to be a Member of Parliament.

## **17 The Executive Council**

(1) The Executive Council is the institution through which Government collectively and formally advises the Head of State for the purpose of implementing Government decisions that require the force of law.

(2) The functions of the Executive Council include—

(a) the making of Orders in Council and regulations:

(b) the carrying out of other formal acts of State:

(c) providing ministers an opportunity to brief the Head of State on developments and current issues.

(3) The members of the Executive Council comprise those persons who have been appointed under this Constitution to be ministers and who hold current warrants.

(4) The Head of State presides over the Executive Council, but is not considered a member of the Executive Council. In the absence of the Head of State the Administrator of the Government or, in his or her absence, the most senior minister present, presides over the Executive Council.

(5) A quorum of the Executive Council is three members.

(6) The Secretary of the Executive Council is also the Secretary of Cabinet.

## **18 The Office of Prime Minister**

(1) There is established by this Constitution the office of Prime Minister.

(2) The Prime Minister serves as the Head of the Government of the State.

(3) The Prime Minister is elected by a majority of the voting members of the House of Representatives from among its members and is appointed to the office by the Head of State in accordance with Article 10.

(4) The Prime Minister ceases to hold office—

(a) subject to Article 16(6) if he or she ceases to be a member of the House of Representatives:

(b) on the receipt by the Head of State of a letter of resignation from the Prime Minister:

(c) when another person is elected as Prime Minister.

## **19 Roles, functions and responsibilities of the Prime Minister**

The roles, functions and responsibilities of the Prime Minister include the following:

(a) to act as chair of Cabinet proceedings:

(b) to make recommendations on Cabinet and other ministerial appointments and determine portfolio responsibilities of ministers:

(c) to recommend himself or herself for ministerial appointments, in addition to those of the office of Prime Minister but not recommend himself or herself as Deputy Prime Minister, Minister of Finance or Attorney-General:

(d) to oversee the execution of the policies of the Government with and through the appropriate ministers and the public service:

(e) to formulate and manage with ministers the Government's legislative programme in Parliament:

(f) to participate in and be held to account by the House of Representatives for the performance of public duties, under procedures provided for in the standing orders of the House of Representatives:

(g) to be responsible for ministerial conduct and provide standards for ministerial conduct:

(h) to represent the people and Government of the State of Aotearoa New Zealand outside the State:

(i) to perform such other roles, functions and duties as may be required.

## **20 Deputy Prime Minister**

The Prime Minister designates a Deputy Prime Minister from among the members of Cabinet.

## **21 Minister of Finance**

The Prime Minister designates a Minister of Finance to be responsible for economic, financial and fiscal policy.

## **22 Attorney-General**

The Prime Minister designates a minister who has been admitted as a barrister and solicitor to be Attorney-General.

## **23 Ministers**

(1) Ministers are appointed by the Head of State, acting on the advice of the Prime Minister, from among Members of Parliament.

(2) The designations of ministers and their responsibilities are set by the Prime Minister.

(3) A minister is individually responsible to the House of Representatives for the proper and efficient execution of that minister's responsibilities.

(4) A minister ceases to hold office—



(a) if the Minister ceases, other than in the circumstances described in Article 16(6)(b), to be a Member of Parliament for any reason:

(b) if removed from office by the Head of State, acting on the advice of the Prime Minister:

(c) on the receipt by the Prime Minister of a letter of resignation from the minister:

(d) when a new election to the office of Prime Minister is completed and the new ministers have been sworn in.

(5) Any function, duty, or power exercisable by or conferred on any minister (by whatever designation that minister is known) may, unless the context otherwise requires, be exercised or performed by any other minister.

## **24 Cabinet**

(1) There is established a Cabinet, limited to 20 ministers.

(2) The Cabinet has the general direction and control of the Government and is collectively responsible to the House of Representatives for the performance by the Government of its responsibilities.

(3) The Cabinet may appoint such committees as it considers necessary, or are required, to assist the Cabinet in the discharge of its responsibilities; and the purpose, membership and terms of reference of the committees must be reported to the House of Representatives by the Prime Minister.

(4) The Prime Minister may designate ministers as associate ministers to the principal minister in a portfolio with responsibilities delegated by the principal minister.

(5) The Prime Minister may establish up to five ministers outside Cabinet with responsibilities designated by the Prime Minister.

## **25 Cabinet Manual**

The Prime Minister must cause to be published at intervals not exceeding six years a Cabinet Manual that sets out in a transparent fashion a practical guide on—

(a) how the functions of the Head of State are performed:

(b) how ministerial and Cabinet decision-making works in practice:

(c) how legislation is prepared:

(d) how ministers are expected to conduct themselves in office:

(e) how the Government interacts with the House of Representatives, the public service, and the Judiciary.

## **26 The public service**

- (1) The public service recognised by this Constitution is the public service in existence before this Constitution entered into force.
  - (2) The public service is a career-based service, where appointment and promotion is on professional merit.
  - (3) The first duty of the public service is to act in accordance with this Constitution and the law.
  - (4) The public service must be politically neutral and impartial and must serve loyally the Government of the day.
  - (5) The public service must provide ministers with free and frank advice.
  - (6) The public service must uphold the concept of stewardship, that is active planning and management of medium- and long-term interests, along with associated advice.
  - (7) The public service is headed by the State Services Commissioner, appointed by a resolution of the House of Representatives after receiving a recommendation from the appropriate select committee of Parliament.
  - (8) The Commissioner makes decisions independently of ministers and is the employer of chief executives of departments and ministries of the public service.
  - (9) An Act of Parliament in accordance with these principles provides for the public service and the wider state sector and the purposes of that Act are to promote and uphold a state sector system that—
    - (a) is imbued with the spirit of service to the community:
    - (b) provides free and frank advice to the Government:
    - (c) administers the policies of the Government:
    - (d) maintains high standards of integrity and conduct:
    - (e) maintains political neutrality and impartiality:
    - (f) is supported by effective workforce and personnel arrangements:
    - (g) is driven by a culture of excellence and efficiency:
    - (h) fosters a culture of stewardship:
    - (i) requires public servants to act within the law.
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## ***Part 5 The Parliament and Legislature***

### **27 Parliament**

(1) The Parliament of the State consists of the Head of State and the House of Representatives.

(2) Subject to the provisions of this Constitution, Parliament continues to have full power to make laws.

## **28 Fixed four-year parliamentary term**

Unless an early general election is required under Article 29, the term of Parliament is a fixed term of four years from the day fixed for the return of the writs issued for the last preceding general election of members of the House of Representatives.

## **29 Early elections**

(1) A general election may not take place before the expiry of the fixed four-year term of a Parliament unless the election (in this Article referred to as “an early election”) is required to take place in accordance with this Article.

(2) An early election is to take place if the House of Representatives unanimously or by a majority of 75 per cent of all its members passes a motion in the following form: “that there is to be an early election.”

(3) An early election is also to take place if—

(a) the House of Representatives passes a motion set out in paragraph (4) of this Article:

(b) the period of 14 days after the day on which the motion is passed ends without the House of Representatives passing a motion set out in paragraph (5) of this Article.

(4) The form of the motion for the purposes of paragraph (3)(a) of this Article is—“That this House has no confidence in the Government.”

(5) The form of the motion for the purposes of paragraph (3)(b) of this Article is—“That this House has confidence in the Government.”

(6) When an early election is required to take place, Parliament is dissolved—

(a) on the close of the seventh day after the day on which a motion is passed under paragraph (2);

(b) on the close of the seventh day after the day on which the period described in paragraph (3)(b) ends.

## **30 Meetings of the House of Representatives**

(1) Parliament does not require summoning and may exercise its legislative power in accordance with this Constitution at any time.

(2) After any general election of members of the House of Representatives, the House of Representatives must meet no later than 21 days after the first declaration of the official results, on a date to be fixed by the Clerk of the House of Representatives.

(3) Any Bill, petition, or any other parliamentary business before the House of Representatives or any of its committees prior to a general election does not automatically lapse when a general election is held and may be resumed in the next Parliament to the extent reinstated by a resolution of the House of Representatives.

(4) The House of Representatives meets regularly in accordance with a published timetable, which it has agreed.

### **31 House of Representatives**

(1) The House of Representatives is regarded as always in existence.

(2) Members of the House of Representatives are elected from time to time in accordance with the provisions of the Act of Parliament governing the conduct of parliamentary elections.

(3) Members of the House of Representatives are also known as Members of Parliament.

(4) An Act of Parliament must provide for access to information concerning the administration of the House of Representatives and Parliamentary Counsel Office.

### **32 Purpose of House of Representatives**

(1) The House of Representatives is elected to represent the people of Aotearoa New Zealand.

(2) The functions of the House of Representatives include ensuring—

(a) legislation is properly scrutinised, debated and considered by the House of Representatives and by select committees of the House of Representatives, and that select committees take public submissions on legislative proposals:

(b) the election of the Prime Minister:

(c) the confidence of the House of Representatives by voting upon motions of confidence or no confidence in a minister, including the Prime Minister, or in the Government:

(d) that proposals for Government expenditure and taxation are examined before being agreed to:

(e) that Government expenditure is monitored and Government finances are prudently managed:

(f) that ministers and the public service are held responsible for their actions and Government policy and motions for no confidence in the Government or a minister are debated and voted on in a timely fashion:

(g) that Government business is conducted in a publicly transparent manner:

(h) that petitions for redress of grievances are properly considered.

### **33 Oath or affirmation of allegiance**

Before sitting or voting in the House of Representatives a Member of Parliament must take an oath or affirmation of allegiance to the State and to this Constitution.

### **34 Election of the Speaker**

- (1) The House of Representatives at its first meeting after any general election of its members, and immediately after any vacancy occurs in the office of the Speaker, elects by a majority of voting members a Speaker by a free vote, that is to say a personal vote on a conscience issue, and every such choice is effective on being confirmed by the Head of State.
- (2) The Speaker does not vote in the House of Representatives but the deputy or assistant speakers may vote.
- (3) The party from which the Speaker is elected may replace that member with the person next on their party list to maintain proportionality within the House of Representatives.
- (4) The Speaker ceases to hold office—
  - (a) on an address of the House of Representatives which address may be moved only on the grounds of misbehaviour or of incapacity to discharge the functions of office:
  - (b) if the Speaker ceases to be a Member of Parliament for any reason:
  - (c) on the receipt by the Head of State of a letter of resignation from the Speaker:
  - (d) upon being appointed a minister.
- (5) No Speaker, Deputy Speaker or assistant may hold office as a minister.

### **35 Functions of the Speaker**

- (1) The functions of the Speaker of the House of Representatives are to—
  - (a) preside impartially over meetings of the House of Representatives, keeping order and making rulings on points of order and procedural issues as required, with the assistance of such deputies and assistants as the House of Representatives appoints:
  - (b) maintain and lay claim to the privileges of the House of Representatives:
  - (c) chair the Parliamentary Service Commission and control the precincts of Parliament:
  - (d) carry out duties and exercise power conferred by the standing orders of the House of Representatives:
  - (e) chair any select committee established to revise the standing orders of Parliament:
  - (f) ensure parliamentary debates are fairly and fully reported in the New Zealand Parliamentary Debates.



(2) The Clerk of the House of Representatives on request advises the Speaker and provides advice to Members of Parliament and select committees.

(3) The Chief Executive of the Parliamentary Service Commission advises the Speaker and assists Members of Parliament with the discharge of their duties.

### **36 Speaker to continue in office**

A person who is in office as Speaker immediately before the House of Representatives adjourns for a general election continues in office until the next Speaker is elected.

### **37 Deputy speakers and assistants**

(1) The House of Representatives may elect a Deputy Speaker and assistant speakers.

(2) The Deputy Speaker and assistants may deputise for the Speaker in that person's absence as provided for by the standing orders of the House of Representatives.

### **38 Leader of the House of Representatives**

The Prime Minister designates one minister to be Leader of the House of Representatives who is responsible for the programming of Government business and the Government's legislative programme.

### **39 Leader of the Opposition**

The Member of Parliament who is leader of the largest parliamentary party represented in the House of Representatives not in Government, not in coalition with a Government party and not subject to any agreement for confidence and supply is recognised by the Speaker as Leader of the Opposition.

### **40 Parliamentary procedure**

Subject to this Constitution the House of Representatives may regulate its own procedure and for that purpose make and publish standing orders.

### **41 Parliamentary privilege**

(1) The House of Representatives and its members have the rights, powers, privileges and jurisdiction vested in the House of Representatives as immediately prior to the coming into force of this Constitution except as they are altered by or inconsistent with this Constitution.

(2) Parliamentary privilege is part of the law of the State and the courts define the existence and extent of the privilege.

(3) The House of Representatives determines the manner of the exercise of the privilege.

(4) The House of Representatives is bound by the Bill of Rights contained in this Constitution but the manner of the exercise of parliamentary privilege is not intended to be justiciable in the courts.

(5) Where an issue arises in a court that touches upon the privileges of the House of Representatives the Judge communicates to the Speaker the issue that has arisen.

(6) Where an issue arises as to a conflict between privilege and the Bill of Rights the chair of the Privileges Committee obtains a legal opinion from the Solicitor-General and the opinion is published and reported to the House of Representatives after the issue has been determined.

(7) The freedom of speech and debates or proceedings in Parliament shall not be impeached or questioned in any court or place out of Parliament.

(8) Serious breaches of privilege may be enforced by fine or imprisonment for a period not exceeding one year.

(9) The House of Representatives has the power to send for persons, papers and records and this power may be delegated by the House of Representatives to its committees.

## **42 The administration of Parliament**

The affairs of Parliament are administered by a Parliamentary Service Commission headed by the Speaker as provided for by Act of Parliament.

## **43 Parliamentary committees**

(1) The House of Representatives establishes by standing orders a system of committees including a Business Committee, a Privileges Committee, a Standing Orders Committee, a Regulations Review Committee, a Human Rights Committee and a system of subject matter select committees to examine government policy, legislation, expenditure and administration, and to make inquiries into such matters as fall within the subject matter of their jurisdiction.

(2) Ministers are not eligible to serve on subject matter select committees, the Regulations Review Committee or the Human Rights Committee.

(3) Select committees have the power to recommend to the House of Representatives new legislative proposals.

(4) The Constitutional Commission must review the list of committees in paragraph (1) when undertaking its review under Article 117.

## **44 Salaries, allowances and standards**

(1) Members of Parliament receive remuneration, expenses and retirement allowances appropriate to the full time performance of their responsibilities and the amounts are set from time to time by an independent public authority as provided for by Act of Parliament.

(2) The independent authority must ensure that Members of Parliament are supported in a way that maintains public confidence in the integrity of the House of Representatives and provides its members with the efficient delivery of services required to carry out their roles.

(3) The House of Representatives must maintain under independent oversight a register of interests of Members of Parliament which shall be available for public inspection.

(4) The House of Representatives must maintain and by resolution approve a code of conduct for members prepared under the supervision of the Speaker.

## **45 Parliamentary elections**

(1) Elections for membership of the House of Representatives are conducted by equal suffrage and secret ballot under the mixed-member-proportional system as provided for by Act of Parliament.

(2) An Act of Parliament provides for the electoral system and also for an independent Electoral Commission that has the following objectives:

(a) to facilitate participation in parliamentary democracy:

(b) to promote understanding of the electoral system and associated matters:

(c) to maintain confidence in the impartial and professional administration of parliamentary elections.

(3) The Electoral Commission must act independently in performing its statutory functions and duties, and exercising its statutory powers.

(4) The Act of Parliament referred to in paragraph (2) provides for:

(a) the registration of electors and compilation of electoral rolls; and

(b) the registration of political parties:

(c) the qualification and nomination of candidates:

(d) regulation of election advertising:

(e) limits on individual and political party election expenses and the public reporting thereof:

(f) limits on donations to political parties and candidates and the public reporting thereof:

(g) prohibition of corrupt and illegal election practices:

(h) the filling of vacancies in the membership of the House of Representatives:

(i) the declaration of the results of elections and challenges to those results.

## **46 Representation Commission**

- (1) There continues to be an independent commission known as the Representation Commission.
  - (2) The function of the Commission is to provide for the periodical readjustment of the representation of the electoral districts in the House of Representatives.
  - (3) The Commission must ensure that electoral boundaries are fairly drawn to secure equal representation as far as practicable and to avoid gerrymandering.
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## ***Part 6 Law-making***

### **47 Legislative procedures**

- (1) Subject to this Constitution a Bill becomes law when it is passed by an affirmative vote of a voting majority of members of the House of Representatives and assent of the Head of State is signified.
- (2) A Bill may be introduced as—
  - (a) a Government Bill—a Bill dealing with a matter of public policy <sup>[SEP]</sup>introduced by a minister:
  - (b) a Member's Bill—a Bill dealing with a matter of public policy <sup>[SEP]</sup>introduced by a Member of Parliament who is not a minister:
  - (c) a local Bill—a Bill promoted by a local authority, which affects <sup>[SEP]</sup>a particular locality only:
  - (d) a private Bill—a Bill promoted by a person or body of persons (whether incorporated or not) for the particular interest or benefit of that person or body of persons.
- (3) A Bill must identify on its face which of the above classes it is.
- (4) <sup>[SEP]</sup>If any question arises as to the classification of a Bill, the Speaker decides the matter.
- (5) Subject to this Constitution, parliamentary procedures for the passage of legislation are established by the standing orders of the House of Representatives.
- (6) A Bill passed by the House of Representatives becomes law when the Head of State, on advice from the Prime Minister and Attorney-General, signs it.

### **48 Information concerning Government legislation**

Before introducing to the House of Representatives a Bill containing a new legislative scheme or a Bill containing significant or extensive amendments to an existing Act, the Government must make publicly available in advance information concerning the proposed legislation, including but not limited to—

- (a) the detailed nature of the proposals:

<sup>[1]</sup><sub>SEP</sub>(b) the policy papers relating to the changes:

<sup>[1]</sup><sub>SEP</sub>(c) the administrative arrangements proposed:

(d) the fiscal costs of the new measures:

<sup>[1]</sup><sub>SEP</sub>(e) an analysis of Treaty of Waitangi issues, if any:

<sup>[1]</sup><sub>SEP</sub>(f) an analysis whether the proposals comply with this Constitution.

## **49 Legislative programme**

(1) For each four-year term of Parliament, the Leader of the House of Representatives must publish the Government's proposed legislative programme for the term.

(2) For each calendar year of the Parliament, the Government must publish its proposed legislative programme for that calendar year.

## <sup>[1]</sup><sub>SEP</sub>**50 Urgency**

A motion for urgency to expedite the consideration of legislation requires a 75 per cent majority of the members voting in the House of Representatives.

## **51 Drafting, presentation and accessibility of legislation**

An Act of Parliament provides for—

(a) the drafting, publication and reprinting of legislation, and the disallowing <sup>[1]</sup><sub>SEP</sub>and confirming of instruments:

(b) electronic and printed copies of Acts and legislative instruments to be <sup>[1]</sup><sub>SEP</sub>published:

(c) official versions of Acts and legislative instruments to be published in electronic form:

(d) facilitating the production of up-to-date reprints that are modernised <sup>[1]</sup><sub>SEP</sub>and made consistent with current drafting practice concerning their <sup>[1]</sup><sub>SEP</sub>mode of expression, style and format:

(e) making statute law more accessible, readable and easier to understand by <sup>[1]</sup><sub>SEP</sub>facilitating the progressive and systematic revision of the body of statute <sup>[1]</sup><sub>SEP</sub>law:

(f) enabling technical or voluminous subordinate legislation that is of <sup>[1]</sup><sub>SEP</sub>limited interest to the general public to incorporate material by reference in reliance on that Act, subject to compliance with consultation and other requirements.

## **52 Statutory instruments and delegated legislation**



(1) An Act of Parliament authorises the House of Representatives to disallow or amend by resolution statutory instruments and other forms of delegated or subordinate legislation made under the authority of an Act of Parliament.

(2) All statutory instruments and other forms of delegated or subordinate legislation made under the authority of an Act of Parliament fall under the supervisory jurisdiction of the Regulations Review Committee of the House of Representatives and that Committee is chaired by a member of the Opposition.

<sup>[1]</sup><sub>SEP</sub>(3) The Committee has, subject to the standing orders of the House of Representatives, the power to—

<sup>[1]</sup><sub>SEP</sub>(a) hear complaints from members of the public about statutory instruments and other forms of delegated or subordinate legislation:

(b) make recommendations that statutory instruments and other forms of delegated or subordinate legislation should be disallowed or amended by the House of Representatives.

(4) Without prejudice to the development of further grounds for disallowance or amendment that may be recommended by the Committee, the grounds on which a recommendation may be made under paragraph (3) include that the statutory instrument or other form of delegated or subordinate legislation—

(a) is contrary to this Constitution:

<sup>[1]</sup><sub>SEP</sub>(b) is not in accordance with the general objects and intentions of the enactment under which it is made:

<sup>[1]</sup><sub>SEP</sub>(c) trespasses unduly on personal rights and liberties:

(d) appears to make some unusual or unexpected use of the powers conferred by the enactment under which it is made:

(e) unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal:

(f) purports to exclude the jurisdiction of the courts without explicit authorisation in the enactment under which it is made:

<sup>[1]</sup><sub>SEP</sub>(g) contains matter more appropriate for parliamentary enactment:

(h) is retrospective where this is not expressly authorised by the enactment under which it is made:

<sup>[1]</sup><sub>SEP</sub>(i) was not made in compliance with particular notice and consultation procedures prescribed by applicable enactments:

(j) requires elucidation for any other reason concerning its form or purport.

## **53 Law Commission**

An Act of Parliament provides for an independent Law Commission to promote the systematic review, reform and development of the law of the State.

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## ***Part 7 Finance and Taxation***

### **54 Government's financial veto**

(1) The House of Representatives must not pass a Bill, amendment or motion that the Government certifies it does not concur in because, in its view, the Bill, amendment or motion would have more than a minor impact on the Government's fiscal aggregates if it became law.

(2) In addition, the House of Representatives must not make a change to an appropriation that the Government certifies it does not concur in because, in its view, the change would, if made, have more than a minor impact on the composition of the vote.

### **55 Parliamentary control of public finance**

It is not lawful for the Government, except by or under an Act of Parliament—

- (a) to levy a tax:
- (b) to raise a loan or to receive any money as a loan from any person:
- (c) to spend any public money.

### **56 Restrictions on money bills**

Except on the recommendation or with the consent of Cabinet, signified by a minister, the House of Representatives must not—

(1) pass any Bill, amendment or motion which, in the opinion of the person presiding, makes provision for any of the following purposes—

- (a) imposing, increasing, reducing or abolishing any tax:
- (b) imposing or increasing any charge on any public fund or public revenue of the State or for altering any such charge otherwise than by reducing it:
- (c) compounding or remitting any debt due to the Government:

(2) pass any motion the effect of which in the opinion of the person presiding would be to make provision for any of these purposes.

### **57 Public finance controls**

An Act of Parliament determines the detailed control of public finance which—

(a) provides a framework for parliamentary scrutiny of—

(i) the Government's expenditure proposals:

(ii) the Government's management of its assets and liabilities:

(b) establishes lines of responsibility for effective and efficient management of public financial resources:

(c) specifies the principles for responsible fiscal management in the conduct of fiscal policy and requires regular reporting on the extent to which the Government's fiscal policy is consistent with those principles:

(d) specifies the minimum financial and non-financial reporting obligations of Ministers, departments, departmental agencies, offices of Parliament, and listed organisations and companies:

(e) provides for the application of financial management incentives and for the accountability of listed organisations and companies:

(f) places limits on the ownership of the companies named in the Act:

(g) safeguards public assets by providing statutory authority and control for the—

(i) borrowing of money:

(ii) issuing of securities:

(iii) use of derivatives:

(iv) investment of funds:

(v) operation of bank accounts:

(vi) giving of guarantees and indemnities relating to those public assets.

## **58 Taxation and the Budget**

For each financial year, the Minister of Finance must prepare a Budget that includes proposals with respect to the raising of revenue and incurring of Government expenditure for that financial year, and the Minister of Finance presents the Budget, when approved by Cabinet, to the House of Representatives.

## **59 The Comptroller and Auditor-General**

There must exist an Officer of Parliament appointed by resolution of the House of Representatives, to be known as the Comptroller and Auditor-General, whose function is to audit the public accounts of the State and local government and report to the House of Representatives with the purpose of ensuring that public money are properly spent and accounted for, that public money has been lawfully expended, and that the public has received value for money. An Act of Parliament in accordance with these principles provides for the office.

## **60 Sound money and financial stability**

An Act of Parliament establishes the Reserve Bank of Aotearoa New Zealand, as the central bank, responsible for—

- (a) formulating and implementing monetary policy designed to promote stability in the general level of prices, while recognising the Government's right to determine economic policy:
  - (b) promoting the maintenance of a sound and efficient financial system:
  - (c) carrying out other functions, and exercising powers, that may be specified.
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## ***Part 8 The Judiciary***

### **61 Judicial authority**

- (1) The judicial authority of the State is vested in the courts.
- (2) It is lawful for Acts of Parliament to provide for tribunals to exercise the judicial authority of the State.
- (3) It is lawful for Acts of Parliament to provide for a judge to be appointed as a member of a tribunal.
- (4) The courts and the tribunals are independent and subject only to the Constitution and the law, which they must apply independently, impartially and without fear, favour or prejudice.
- (5) The senior courts have the inherent power to develop the common law in a manner which is compatible with the Constitution. Parliament has the power to alter the common law.
- (6) The procedures and jurisdiction of all courts and tribunals function under the authority of Acts of Parliament. Rules committees may be established for the purpose of making, amending and keeping under review the rules and practices of the courts and tribunals.
- (7) The Chief Justice of the State is the head of the Judiciary. The Chief Justice is a member of, and presides over, the Supreme Court.
- (8) Acts of Parliament may confer investigatory and decision-making functions of a non-judicial nature upon a court or tribunal.
- (9) Acts of Parliament shall limit the number of judges in each court and tribunal. Changes to those numbers may only be made by Act of Parliament.

### **62 Senior courts**

- (1) There shall continue to be the following senior courts which exercise the judicial authority of the State within the jurisdiction conferred upon them by this Constitution and by Act of Parliament:

(a) the High Court:

(b) the Court of Appeal:

(c) the Supreme Court.

(2) The Supreme Court is the court of final appeal. Any decision of the Supreme Court is final and binding on all other courts.

(3) The Supreme Court is not bound by its own decisions.

### **63 Other courts and tribunals**

(1) Subject to this Constitution, Acts of Parliament establish such other courts (other than the senior courts) and tribunals as are considered appropriate for the administration of justice within the State and make provision for matters related to their administration and jurisdiction.

(2) Those courts and tribunals in existence at the time of the commencement of this Constitution continue in existence with the powers, privileges and jurisdiction conferred upon them until such time as they are reorganised by Acts of Parliament.

(3) No tribunal, other than a military tribunal, may determine a criminal charge. A military tribunal may only determine a criminal charge against military law.

### **64 Judicial Appointments Commission**

(1) An Act of Parliament must establish a Judicial Appointments Commission within two years of the commencement of this Constitution.

(2) The Act of Parliament must—

(a) provide that members of the Commission consist of persons who are members of the Judiciary, the legal profession, the House of Representatives and the general public:

(b) set out procedures for the Commission to identify candidates for judicial office to be selected on merit, having regard to the candidate's personal qualities, legal ability and experience, and the desirability of the Judiciary reflecting gender, cultural and ethnic diversity:

(c) require the Commission to produce a short list of candidates whom it considers suitable for appointment to a judicial vacancy.

(3) Following the expiry of three years from the commencement of this Constitution, no person may be appointed as a judge of any court unless that person's name appears upon the shortlist for that vacancy produced by the Commission.

### **65 Protection of Judges against removal from office**

No judge is to be removed from office except by the Head of State acting upon an address of the House of Representatives, which address may be moved only on the grounds of that judge's misbehaviour or of that judge's incapacity to discharge the functions of office.

(1) No such address shall be moved in the House of Representatives except by the Attorney-General. The Attorney-General may only move such an address after he or she has received a report from an independent panel established by Act of Parliament set up to inquire into and report upon the conduct or capacity of the judge.

(2) The independence of tribunals must be secured by Act of Parliament. Members of tribunals, including a member who is a judge, may be appointed to the tribunal for a limited term of office.

## **66 Salaries of judges not to be reduced**

The salary of a judge must not be reduced, and no other adverse changes made in other conditions of service, during the judge's tenure of office.

## **67 Age of retirement**

All judges cease to hold office upon attaining the age of 72 years. However, an Act of Parliament may permit a retired judge to be appointed as a temporary judge of the court of which he or she was a judge immediately prior to attaining the age of 72 years of age.

## **68 Constitutional jurisdiction of the courts and tribunals**

(1) All courts and tribunals have jurisdiction to determine the question of the inconsistency of any law or conduct with this Constitution in proceedings that otherwise fall within the jurisdiction conferred upon them.

(2) When deciding a constitutional matter within its jurisdiction, a court or tribunal—

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency:

(b) may make any order that is just and equitable in order to remedy the consequences or effects of that inconsistency:

(c) may make any order that is just and equitable to limit the effects of a declaration of invalidity or of a remedial order including:

(i) an order prospectively limiting the retrospective effect of the declaration of invalidity or of the remedial order:

(ii) an order suspending the declaration of invalidity or of the remedial order for any period and on any conditions, to allow the competent authority to correct the inconsistency.

(3) Where any declaration or order described in paragraph (2) concerns the consistency of an Act of Parliament with this Constitution, that declaration or order is conditional on its confirmation by the Supreme Court. The Supreme Court has power to confirm, vary, modify or set aside any declaration or order which it



is asked to confirm. The procedure for confirmation by the Supreme Court may be regulated by Act of Parliament.

(4) Where an Act of Parliament has been held or confirmed to be inconsistent with this Constitution by the Supreme Court, within one year of the decision of the Supreme Court, Parliament may enact an Act of Parliament (“the validating Act”) that provides that, notwithstanding the decision of the Supreme Court, the Act of Parliament in question shall continue to have effect, subject to such modifications or limitations as are provided for in the validating Act.

(5) A validating Act described in paragraph (4) has no legal force or effect unless it receives the support of a 75 per cent majority of all members of the House of Representatives. Where a constitutional matter within its jurisdiction arises in a court that is not a senior court, or in a tribunal, the court or tribunal may remove the proceedings to the High Court for its determination on that matter, in accordance with an Act of Parliament or rules of court.

## **69 Government’s duty to protect the courts and tribunals**

The Government is under a duty to protect the courts and tribunals to ensure their independence, impartiality, dignity, accessibility and effectiveness. The Attorney-General shall have a particular responsibility to ensure that this duty is discharged.

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## ***Part 9 International Relations***

### **70 Diplomacy and treaties**

(1) The Prime Minister and the Minister of Foreign Affairs carry the primary responsibility for the conduct of the State’s international relations, assisted by other ministers, diplomats and public servants.

<sup>[113]</sup>  
<sup>[SEP]</sup>(2) Subject to this Constitution and Acts of Parliament, the Government has the necessary powers for that purpose, including the power to maintain diplomatic representatives abroad and to receive diplomatic representatives from other states.

(3) The State accepts the generally recognised principles of international law, including the principles of customary international law.

(4) After the commencement of this Constitution the State is not bound by any international agreement unless and until agreement to be bound is expressed by a Cabinet decision which has been approved by resolution of the House of Representatives. For the purposes of this Article a treaty includes any international agreement, treaty or convention that creates obligations on the State binding under international law.

(5) Paragraph (4) does not apply to any international agreement entered into by or on behalf of the Crown in right of New Zealand prior to the commencement of this Constitution.

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## *Part 10 Defence and Security*

### **71 Armed Forces and Defence Force**

(1) The State may continue to raise and maintain a defence force for the defence and protection of the State and to further the interests of the State as provided for by Act of Parliament.

(2) The purposes of the Defence Force, which includes the Armed Forces and civil support, are—

(a) the defence of the State and any area for the defence of which the State is responsible under any Act:

(b) the protection of the interests of the State, whether in the State or elsewhere:

(c) the contribution of forces under collective security treaties, agreements or other arrangements:

(d) the contribution of forces to, or for any of the purposes of the United Nations, or in association with other organisations or States and in accordance with the principles of the Charter of the United Nations:

(e) the provision of assistance to the civil power either in the State or elsewhere in time of emergency.

(3) The use of the Armed Forces of the State to assist the civil power in the State or provide help in emergencies are subject to limitations provided for by Act of Parliament.

(4) The Chief of the Defence Force and the chiefs of the three armed services, being the Navy, Army and Air Force, are appointed by Parliament after receiving a recommendation from the appropriate select committee of the House of Representatives.

(5) The Head of State is the titular head of the Armed Forces of the State.

(6) The Defence Force must be politically neutral and impartial but subject to that it must serve loyally the Government of the day.

(7) Without the prior approval by affirmative resolution of the House of Representatives, the Government must not, whether by declaration of war or otherwise, commit the State to—

(a) direct participation in any armed conflict, war or like emergency:

(b) any deployment overseas of armed forces for any purpose as under paragraphs 2(c) or 2(d).

(8) As early as practicable prior to the proceedings referred in paragraph (7) the opinion of the Attorney-General on the legality at domestic and international law of the grounds for the State's involvement proposed by the Government, must be presented to the House of Representatives.

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## ***Part 11 Te Tiriti o Waitangi / The Treaty of Waitangi***

### **72 Te Tiriti o Waitangi / The Treaty of Waitangi**

(1) The rights, duties and obligations of Māori under te Tiriti o Waitangi/the Treaty of Waitangi are hereby recognised and affirmed.

(2) On the commencement of this Constitution, all rights, duties and obligations under te Tiriti o Waitangi / the Treaty of Waitangi and under Treaty settlement agreements previously vested in the Crown in right of New Zealand, vest in and are assumed by, the State.

(3) Te Tiriti o Waitangi/the Treaty of Waitangi is considered as always speaking and is to be applied to circumstances as they arise so that effect may be given to its spirit, intent and principles.

(4) Te Tiriti o Waitangi / the Treaty of Waitangi means the Treaty as set out in Māori and English in the Appendix.

### **73 The Waitangi Tribunal**

There continues to be a body known as the Waitangi Tribunal, which is provided for by an Act of Parliament.

### **74 Application of the Treaty**

Where issues arise which relate to te Tiriti o Waitangi/the Treaty of Waitangi or which involve tikanga Māori, the courts and tribunals have the power to request an opinion from the Waitangi Tribunal or other established experts on those issues.

## *Part 12 The Bill of Rights*

### **75 Rights affirmed**

The rights and freedoms contained in this Part (referred to in this Constitution as ‘the Bill of Rights’) are adopted and affirmed.

### **76 Application**

This Bill of Rights applies only to acts done—

(a) by the legislative, executive or judicial branches of the State:

(b) by any person or body in the performance of any public function, power or duty conferred or imposed on that person or body.

### **77 Justified limitations**

The rights and freedoms contained in this Part may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### **78 Rights preferred**

Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Part, that meaning is preferred to any other meaning.

### **79 Legal persons entitled to benefit of rights and freedoms**

(1) Except where the provisions of this Part otherwise provide, the provisions of this Part apply, so far as practicable, for the benefit of all legal persons as well as for the benefit of all natural persons.

(2) The rights conferred on legal persons by paragraph (1) may be limited in accordance with the terms of Article 77.

(3) Articles 81 (right not to be deprived of life), 82(a) (right not to be subjected to torture), 83 (right not to be subjected to medical or scientific experimentation), 84 (right to refuse to undergo medical treatment), 85 (right not to be held in slavery, servitude or required to perform forced compulsory labour), 86 (electoral rights), 93 (freedom of movement), 98 (liberty of the person) and 99 (rights of persons arrested or detained) do not apply to legal persons.

### **80 Other rights and freedoms not affected**

No right or freedom (recognised by legislation or by the common law) shall be held to be abrogated or restricted by reason only that the right or freedom is not included in this Part or is included only in part.

#### *Life and security of the person*

### **81 Right not to be deprived of life**

No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.

## **82 Right not to be subjected to torture or cruel treatment**

Everyone has the right not to be subjected to—

(a) torture:

(b) cruel, degrading or disproportionately severe treatment or punishment.

## **83 Right not to be subjected to medical or scientific experimentation**

Every person has the right not to be subjected to medical or scientific experimentation without that person's consent.

## **84 Right to refuse to undergo medical treatment**

Everyone has the right to refuse to undergo any medical treatment.

## **85 Right not to be held in slavery or servitude, or required to perform forced or compulsory labour**

Everyone has the right not to be held in slavery or in servitude, or required to perform forced or compulsory labour.

### *Democratic and civil rights*

## **86 Electoral rights**

(1) Every citizen who is of or over the age of 18 years—

(a) has the right to vote in genuine periodic elections of members of the House of Representatives and of local government representatives, which elections shall be by equal suffrage and by secret ballot as set out in Article 45 and Article 110(1)(d):

(b) is qualified for membership of the House of Representatives and to be elected as a local government representative.

(2) Paragraph (1) does not prevent an Act of Parliament from conferring on non-citizens the right to vote and to be a candidate at elections of the House of Representatives and of local government bodies.

## **87 Freedom of thought, conscience and religion**

Everyone has the right to freedom of thought, conscience, religion and belief, including the right to adopt and to hold opinions without interference.

## **88 Freedom of expression**

Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind in any form.

### **89 Manifestation of religion and belief**

Every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.

### **90 Freedom of peaceful assembly**

Everyone has the right to freedom of peaceful assembly.

### **91 Freedom of association**

Everyone has the right to freedom of association.

### **92 Freedom of privacy**

Everyone has the right not to be subject to arbitrary or unlawful interference with that person's privacy, family, home or correspondence.

### **93 Freedom of movement**

(1) Everyone lawfully in the State has the right to freedom of movement and residence in the State.

(2) Every citizen of the State has the right to enter the State.

(3) Everyone has the right to leave the State.

(4) No one who is not a citizen of the State and who is lawfully in the State shall be required to leave the State except under a decision taken on grounds prescribed by law.

(5) Every citizen of the State has the right to a passport.

### **94 Right to a state education**

Every person is entitled to free enrolment and free education at any State primary or secondary school.

#### *Equality, non-discrimination and minority rights*

### **95 Equality before the law**

Everyone shall be treated as equal before the law including before the courts and tribunals, and shall be given the equal protection of the law.

### **96 Freedom from discrimination**



(1) Everyone has the right to freedom from discrimination on the grounds of sex, gender, colour, race, language, ethnic or national origins, marital or family status, religious or ethical belief, disability, age, political or other opinion, employment status, or sexual orientation.

(2) Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination on the grounds listed in paragraph (1) do not constitute discrimination.

(3) The Constitutional Commission must review the list of grounds in paragraph (1) when undertaking its review under Article 117.

## **97 Rights of minorities**

A person who belongs to an ethnic, religious or linguistic minority in the State shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.

### *Liberty, arrest, detention and criminal process*

## **98 Liberty of the person**

Everyone has the right to—

(a) liberty and security of the person, and shall not be deprived thereof except in accordance with the principles of fundamental justice:

(b) not to be arbitrarily or unlawfully arrested or detained.

## **99 Rights of persons arrested or detained**

(1) Everyone who is arrested or who is detained under any enactment—

(a) shall be informed at the time of the arrest or detention of the reason for it:

(b) shall have the right to consult and instruct a lawyer without delay and to be informed of that right:

(c) shall have the right to have the validity of the arrest or detention determined without delay by way of habeas corpus and to be released if the arrest or detention is arbitrary or not lawful.

(2) Everyone who is arrested for an offence has the right to be charged promptly or to be released.

(3) Everyone who is arrested for an offence and is not released shall be brought as soon as possible before a court or competent tribunal.

(4) Everyone who is—

(a) arrested:

(b) detained under any enactment for any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.

(5) Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.

### **100 Rights of persons charged**

Everyone who is charged with an offence—

(a) shall be informed promptly and in detail of the nature and cause of the charge:

(b) shall be released on reasonable terms and conditions unless there is just cause for continued detention:

(c) shall have the right to consult and instruct a lawyer:

(d) shall have the right to adequate time and facilities to prepare a defence:

(e) shall have the right, except in the case of an offence under military law tried before a military tribunal, to the benefit of a trial by jury when the penalty for the offence is or includes imprisonment for two years or more:

(f) shall have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance:

(g) shall have the right to have the free assistance of an interpreter if the person cannot understand or speak the language used in court.

### **101 Minimum standards of criminal procedure**

Everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights:

(a) the right to a fair and public hearing by an independent and impartial court:

(b) the right to be tried without undue delay:

(c) the right to be presumed innocent until proved guilty according to law:

(d) the right not to be compelled to be a witness or to confess guilt:

(e) the right to be present at the trial and to present a defence:

(f) the right to examine the witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as the prosecution:

(g) the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty:

(h) the right, if convicted of the offence, to appeal according to law to a higher court against the conviction or against the sentence or against both:

(i) the right, in the case of a child, to be dealt with in a manner that takes account of the child's age.

## **102 Retroactive penalties and double jeopardy**

(1) No one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person at the time it occurred.

(2) No one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again.

### *Fair process*

## **103 Right to justice**

(1) Every person has the right to the observance of the principles of natural justice by any court, tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.

(2) Every person whose rights, obligations or interests protected or recognised by law have been affected by a determination of any court that is not a senior court, tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.

(3) Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the State, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.

### *Property*

## **104 Right to property**

(1) Everyone has the right not to be deprived of his or her property except in accordance with the following principles:

(a) deprivation shall not occur except pursuant to an Act of Parliament:

(b) deprivation shall only be pursuant to a law of general application and in pursuit of a public purpose or public interest:

(c) deprivation shall not be arbitrary:

(d) deprivation by way of expropriation shall be subject to the prompt payment of just and equitable compensation.

(2) For the avoidance of doubt, deprivation in pursuit of a public purpose or public interest shall include, but not be limited to—

(a) the carrying out of public works (whether or not the works are undertaken by a person or body referred to in Article 76):

(b) taxation, and the levying of rates or charges:

(c) the benefit of public health, resource management, the environment, public transport, the integrity of the financial sector, law enforcement, family relationship purposes, or any other aspect of the common good.

(3) Nothing in this Article applies to any sanctions that the State is required to impose pursuant to a resolution of the Security Council of the United Nations.

### *The Environment*

#### **105 Environmental rights**

Everyone has the right—

(a) to an environment that is not harmful to his or her health or wellbeing; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

(i) reduce pollution and ecological degradation:

(ii) promote conservation:

(iii) pursue ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

### *Social and Economic Rights*

#### **106 Social and economic rights**

In making provision for the social and economic welfare of the people, Parliament and the Government shall be guided by the following non-justiciable principles:

(a) the right of everyone to an adequate standard of living, including adequate food, clothing and housing:

(b) the right of everyone who requires it to social security for the provision of financial and other support that clearly establishes the entitlements that may be claimed:

(c) the right of everyone to the enjoyment of the highest attainable standard of physical and mental health:

(d) the right of every worker to resort to collective action in the event of a conflict of interests, including the right to strike:

- (e) the right of every worker to enjoy satisfactory health and safety conditions in their working environment:
  - (f) the right of workers to earn their living in an occupation freely entered upon.
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### ***Part 13 Other State Institutions***

#### **107 The law officers**

- (1) The law officers of the State are the Attorney-General and the Solicitor-General.
- (2) Both law officers must have been admitted as barristers and solicitors of the High Court.
- (3) The Attorney-General must be designated by the Prime Minister from amongst the members of Cabinet.
- (4) The Solicitor-General must be a highly qualified practising lawyer appointed by the Head of State upon the advice of the State Services Commissioner who shall assist the Attorney-General and be the Chief Executive of the State's law office.
- (5) The law officers determine the State's view of the law, provide legal advice to ministers and the public service, and conduct litigation brought against the State. In discharging these functions, the law officers must strive to uphold the rule of law.
- (6) Prosecutions by the State are brought in the name of the State.
- (7) No minister shall make any decision concerning whom to prosecute. The Solicitor-General supervises the making of decisions to prosecute and the system of prosecutions.
- (8) Nothing in this Constitution prohibits private prosecutions.
- (9) The Solicitor-General may perform any function or duty imposed, or exercise a power conferred, on the Attorney-General.

#### **108 Police**

- (1) An Act of Parliament provides for the organisation and governance of the police based on the following principles:
  - (a) principled, effective and efficient policing services are a cornerstone of a free and democratic society under the rule of law:
  - (b) effective policing relies on a wide measure of public support and confidence:
  - (c) policing services are provided under a national framework but also have a local community focus:
  - (d) policing services are provided in a manner that respects human rights:

(e) policing services are provided independently and impartially:

(f) in providing policing services every police employee is required to act professionally, ethically and with integrity:

(g) members of the police in carrying out their duties and exercising their discretion act under the principle of constabulary independence.

(2) The police are held to account among other ways by an independent authority established to investigate complaints concerning police conduct and provided for under an Act of Parliament.

## **109 The intelligence agencies**

(1) The New Zealand Security Intelligence Service and the Government Communications Security Bureau (the agencies) are governed by a single Act of Parliament that sets out their functions, powers and oversight mechanisms and is regularly reviewed within periods of not more than seven years.

(2) The agencies are established as public service departments.

(3) The objectives of the agencies are to preserve a free, open and democratic society; to protect the State's national security (including its economic security); the maintenance of international security and the international relations of the State; and economic wellbeing.

(4) The agencies have the function of collecting intelligence, providing protective security and assisting other government agencies.

(5) The legislation must set out clear limits upon the extent to which the agencies may direct their activities towards New Zealand citizens and permanent residents, so that New Zealand objects are targeted only when it is necessary to protect national security with clear authorisation in the law as to when and how the intelligence may be used.

(6) Interceptions of communications, acquisition of information held by third parties, accessing information infrastructure, surveillance and the use of human sources for intelligence purposes may only be authorised by warrants authorised by judicial commissioners, headed by a Chief Commissioner of Intelligence Warrants. Some authorisations will require the approval of the Attorney-General.

(7) All activity by the agencies must be authorised by law and the procedures for doing so set out in the Act described in paragraph (1). Records of all authorisations must be kept.

(8) Access to, retention and the use of information collected by the agencies must be limited by law.

(9) An Inspector-General of Intelligence must be provided for, who will have clear powers to ensure the agencies are acting in compliance with the law, to independently investigate complaints about the agencies and to advise the Government and Parliament on matters relating to oversight of the agencies.

## **110 Local government**



(1) The State must have a democratic, transparent and accountable system of local government based on the following principles:

(a) the principle of subsidiarity, meaning that the provision of services and the solution of problems should take place as close to the citizens as practicable as the nature of the relevant process allows subject to allocative efficiency:

(b) the power of units of local government to manage their own affairs independently within subject-matters established in Acts of Parliament:

(c) fostering within each unit of local government the concept of community:

(d) local government representatives must be democratically elected by secret ballot:

(e) local government must be open and transparent in its decision- making and accountable to its citizens:

(f) the financing of local government by the imposition of rates on land and property provided for by Act of Parliament must be accompanied by a revenue sharing programme with central government negotiated between central and local government:

(g) Parliament may provide special procedures for central government to ensure compliance with the law and the execution of delegated responsibilities, including the appointment of independent commissioners in accordance with law.

(2) When any new responsibility is placed on local government by or under Act of Parliament, that must be preceded by adequate consultation and estimates of the financial and administrative costs of that new responsibility.

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## ***Part 14 Integrity and Transparency***

### **111 The Ombudsman**

There must be an officer of Parliament known as the Ombudsman appointed by Parliament, who has power to investigate and report to Parliament upon maladministration and wrongs done by administrative decisions of central and local government. An Act of Parliament in accordance with these principles provides for the office.

### **112 The Parliamentary Commissioner for the Environment**

There must be an officer of Parliament appointed by Parliament to function as an independent check on the capability of the State's system of environmental management and the performance of public authorities in maintaining and promoting the quality of the environment. An Act of Parliament in accordance with these principles provides for the office.

### **113 Complaints bodies**

In order to promote accountability of public decision-making and to protect the public against the abuse of public power, Parliament may from time to time by Act provide agencies for complaints to be made by members of the public and publicly reported upon in respect to breaches of human rights, invasions of privacy, substandard treatment in the public health system, the treatment of children and other matters.

## **114 Official information**

(1) Official information must be made publicly available to the greatest extent practicable by public bodies, including the Government and local government bodies, to enable more effective participation in the making and administration of laws and policies by members of the public and to promote the accountability of ministers and elected and unelected officials, and thereby to enhance respect for the law and to promote good governance.

(2) An Act of Parliament in accordance with these principles must—

(a) provide for the availability of official information and the access for individuals and bodies corporate to information concerning themselves:

(b) provide for the establishment of an independent Information Authority:

(c) empower the Information Authority to release information in cases where access to that information has been denied.

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## ***Part 15 Commencement and Amendment***

### **115 Commencement**

If the proposal to approve this Constitution is carried by a majority of the valid votes cast by electors eligible to vote at the poll conducted under the Act of Parliament enacted for that purpose, this Constitution comes into force on the date specified in that Act for the commencement of this Constitution.

### **116 Entrenchment and amendment**

(1) No article or part of this Constitution may be repealed or amended following the commencement of this Constitution unless the proposal for the repeal or amendment:

(a) is contained in an Act of Parliament that has been passed by a majority of 75 per cent of all members of the House of Representatives:

(b) is contained in the Act of Parliament that has been carried by a majority of the valid votes cast at a poll of the electors eligible to vote.

(2) The Appendix to this Constitution containing the text of te Tiriti o Waitangi / the Treaty of Waitangi cannot be amended.

### **117 Constitutional Commission**

(1) Every 10 years, following the year in which this Constitution comes into force, the House of Representatives must appoint by resolution a Constitutional Commission to sit for up to six months to consider possible amendments to the Constitution and report to the House of Representatives, including:

(a) the list of select committees contained in Article 43(4):

(b) the grounds of discrimination contained in Article 96(1).

(2) The Commission comprises 12 members. Six of those members are members by virtue of their office—the Chief Justice, the Solicitor-General, the President of the Law Commission, the Clerk of the House of Representatives, the Chair of the Waitangi Tribunal and the Ombudsman.

(3) The remaining six members of the Commission are members of the public appointed by the House of Representatives.

(4) Before decisions are taken upon the report of the Commission a widespread programme of consultation with the public must be undertaken and provided for in an appropriation by the House of Representatives.

(5) The results of the public consultation must be fully reported to the House of Representatives.

(6) This Article does not prevent amendments to the Constitution in accordance with the provisions of Article 116, whether or not those amendments have been recommended by the Commission.

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## ***Part 16 Emergencies***

### **118 Emergencies and suspension of parts of the Constitution**

(1) Where in the opinion of the Prime Minister, within the State or any part of it—

(a) a grave threat to national security or public order has arisen or is likely to arise:

(b) a grave civil emergency has arisen or is likely to arise,

the Head of State may, by Order in Council, make provision to the extent strictly necessary by the exigencies of the situation and reasonably justified in a democratic society, suspending, in whole or in part, absolutely or subject to conditions, any of the provisions of this Constitution set out in paragraph (3).

(2) Any such Order in Council made under paragraph (1) of this Article must specify a specific date on which the order providing the suspension will commence and expire. Expiry of the order must be no later than 30 days after the order is issued.

(3) Subject to paragraph (4), the following provisions may be suspended under this Article—

(a) Part 12, Articles 75 to 106 concerning the Bill of Rights:

(b) Articles 28 and 29 concerning the duration of Parliament:

(c) Article 48 concerning the availability of legislative information:

(d) Article 50 concerning urgency.

(4) The following provisions of the Bill of Rights may not be suspended under this Article—

(a) Article 81 Right not to be deprived of life:

(b) Article 82 Right not to be subjected to torture or cruel treatment:

(c) Article 85 Freedom from slavery:

(d) Article 87 Freedom of thought, conscience and religion:

(e) Article 95 Equality before the law:

(f) Article 96 Freedom from discrimination:

(g) Article 100 Rights of persons charged:

(h) Article 101 Minimum standards of criminal procedure:

(i) Article 102 Retroactive penalties and double jeopardy.

(5) Unless the urgency of the situation makes it impracticable to obtain approval under this Article, an Order in Council under this Article shall not be made unless a draft of the order has been approved by resolution by a majority of 75 per cent of all the members of the House of Representatives.

(6) An Order in Council that has been made without having been approved in draft under paragraph (5) ceases to have effect unless, within 14 days after it has been made, it is confirmed by resolution, by a majority of 75 per cent of all the members of the House of Representatives.

(7) The validity of an Order in Council made under this Article may be challenged in proceedings for judicial review.

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### *Appendix to the Constitution*

#### **Text of te Tiriti o Waitangi / The Treaty of Waitangi**

(The text in English)

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and

appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

#### Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

#### Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

#### Article the third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

William Hobson, Lieutenant-Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty.

*[Here follow signatures, dates, etc.]*

(The text in Māori)

KO WIKITORIA, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga tangata Maori o Nu Tirani-kia wakaaetia e nga Rangatira Maori te Kawanatanga o te Kuini

ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei. Na, ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pākehā e noho ture kore ana. Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga Hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki, ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaee ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(signed) William Hobson, Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri, i te tau kotahi mano, e waru rau, e wa te kau, o to tatou Ariki.

Ko nga Rangatira o te Wakaminenga.

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## A Note on Sources

Designing a constitution requires adherence to the traditions and political culture of the country the constitution will serve. The text cannot import foreign concepts forged in different constitutional settings because everything has to be adjusted to New Zealand's specific conditions and practices of government. Nevertheless, many other constitutions can contribute to our understanding and, on particular elements, have examples to offer. The text we present has been through many adjustments and changes as comments and insights came from people listed in the acknowledgements. We went through nine drafts in all. No doubt many more alterations will be made as a result of informed public comment.



The work that influenced this project most profoundly and was indeed the inspiration for it was the monumental analysis of the United Kingdom Constitution contained in the House of Commons, Political and Constitutional Reform Committee, *A New Magna Carta?* Second Report of Session 2014–15, HC 463, 10 July 2014. This is work that has been invaluable to us in a New Zealand context because of New Zealand affinities with British constitutional law and history.

Professor Robert Blackburn, of King's College, London, the lead adviser on that project, was good enough to convene and conduct a seminar of interested British constitutional lawyers at King's College, London in February 2016 to consider and comment upon an early draft of our work. The first draft we prepared followed the third part of *A New Magna Carta?* which contains a draft of a written constitution for the United Kingdom. Due to the extensive constitutional changes in the United Kingdom with devolution to Scotland, Wales and Northern Ireland, the legal complexity of the situation there is much greater than in New Zealand. Nevertheless, the basic configuration of the United Kingdom's existing constitution has great similarities to that of New Zealand. The United Kingdom has an unwritten, uncodified constitution based on parliamentary sovereignty as we do.

Both of the authors have taught comparative constitutional law and there were lessons to be learned from many other existing constitutions. In particular Ireland, that has had a written, codified constitution since 1937 was useful in many respects, particularly on how to constitute the state. Further the role of the Head of State in Ireland was a topic of interest to us.

The Australian and Canadian Constitutions are obvious sources of interest to New Zealand, given our similar constitutional heritage. Both are federations, a feature we do not wish to copy, but in other respects their experience is relevant. The State Constitution of Queensland contained in the Constitution of Queensland 2001 is of particular interest since it is modern and contains many topics that we think should be in a constitution, for example local government.

The material on the Judiciary contained in Articles 61 to 69 has benefited from some of the work by the Law Commission in its report: *Law Commission Review of the Judicature Act 1908: Towards a New Courts Act* (NZLC R126, 2012). The report led to the Judicature Modernisation Bill 2013, still before Parliament at the time of writing.

The New Zealand Bill of Rights Act 1990 was based on the Canadian charter model to a very large extent. The content of the 1990 New Zealand Act, along with the Constitution Act 1986, both appear in the proposed Constitution in a substantially similar form to the present. More than 30 articles of the proposed Constitution derive from these two existing Acts of the New Zealand Parliament. Changes to the human rights provisions, such as a right to privacy, result from modern developments in international human rights law since 1990 and the extensive web of international conventions on the subject. These are discussed in chapter eight.

The constitutions of the Pacific Island countries, with which New Zealand has been involved historically and for whom New Zealand constitutional lawyers were important figures in the framing of their constitutions, have been examined. The Constitutions of Samoa, the Cook Islands and Niue have interesting and helpful features in the use of the term "Head of State" and setting out requirements for Cabinet in the constitution.

South Africa has perhaps the most modern and stunning modern Constitution framed in a real constitutional moment. We have borrowed one provision from it, the environmental right in Article 105. We have done this because there is some case law on it and it appears to be the best of the increasing number of environmental protections with constitutional status to be found around the world.

The fixed four-year term for parliamentary elections contained in Articles 28 and 29 is based upon the similar provision to be found in United Kingdom law that provides these days for fixed-term Parliaments in that country: the Fixed-term Parliaments Act 2011 (UK). Such provisions are common in the Australian states.

Other provisions in the Constitution come from New Zealand sources that are not contained in an Act of Parliament. Some of the provisions of the standing orders of Parliament have constitutional significance and have to be included in our view. For example Article 54, which places the fiscal veto in the hands of the Government, and Article 52, containing safeguards against delegated legislation. There are five other articles that impinge upon existing standing orders, for example Article 50, which restricts the use of urgency in the House of Representatives to pass Bills. There are others on law-making.

The provisions in Articles 111–117 relating to institutions of integrity and transparency and Part 13 have their origins for the most part in existing New Zealand Acts of Parliament. The principles contained in Article 109 on the intelligence agencies derive from the 2016 independent report by Sir Michael Cullen and Dame Patsy Reddy, *Intelligence and Security in a Free Society*.

We have also used, particularly in relation to the Treaty of Waitangi, the approach taken in the 1985 White Paper *A Bill of Rights for New Zealand* and proposals contained in the possible Constitution Act of New Zealand contained in the third and fourth editions of *Bridled Power*. Important sources for this project were the analyses and research of scholars who have studied constitutional issues both in New Zealand and in kindred jurisdictions, legal academics, political scientists and historians. In a book of this type, where citations have to be kept to a minimum, we have not been able to acknowledge formally all the published research and books we have benefited from. Government reports on various subjects have also been helpful.

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